United States Court of Appeals

for the Second Circuit

APPENDIX

75-7291

In The

UNITED STATES COURT OF APPEALS

For The Second Circuit

B

P/S

Docket No. 75-7291

S. E. STEIN, Trustee in Bankruptcy for the Estate of Seaway Floor and Paving Company, Inc.,

Plaintiff-Appellee,

-against-

RAND CONSTRUCTION COMPANY, INC.,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York.

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
JUL 25 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

February 20, 1970	Filed complaint and issued summons
March 17, 1970	Filed summons with marshal's ret. Served Rand Construction Co. Inc. by Leonard Hilton on 3/3/70
March 23, 1970	Filed answer of deft
June 27, 1974	Filed Order on consent for substition of pltff's atty. So ordered - TYLER, J.
February 24, 1975	Before Duffy, J. non-jury trial begun and concluded. Judge's decision-reserved.
March 31, 1975	Filed deft's proposed findings of fact and conclusions of law
March 31, 1975	Filed deft's Memorandum Re: admissibility of bankruptcy scheduled to prove insolvency.
March 31, 1975	Filed deft's memorandum of law.
March 31, 1975	Filed Memorandum - Opinion #42127--for the reasons stated, I find that the transfer of the funds to Rand constituted a voidable preference under S 60(a) and (b) of the Bankruptcy Act, 11 USC S. 96(a) and (b). Settle Judgment on notice. DUFFY, J. (m/n)
April 8, 1975	Filed pltff's reply brief.
April 11, 1975	Filed Judgment #75,313-ordered that pltff, recover of the deft. the sum of $25,000.00 together with interest 6% per annum from 10/31/67 until this judgment is paid and costs to be taxed. DUFFY, J. Judgment entered 4/14/75. Clerk (m/n)
May 9, 1975	Filed deft's notice of appeal from the final Judgment entered on 4/11/75. Copies mailed to: Selker, Einbund, Rubenstein & Mosher - and Grunewald, Turk, Gillen & Ford. Entered 5/9/75

70 CIV. 715

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
FILED
FEB 20 1970
S. D. OF N. Y.

S. E. STEIN, TRUSTEE IN BANKRUPTCY
OF THE ESTATE OF SEAWAY FLOOR AND PAVING
COMPANY, INC.,
MIDWEST NATIONAL BUILDING
75 PUBLIC SQUARE
CLEVELAND, OHIO 44113,

PLAINTIFF,

VS.

COMPLAINT

RAND CONSTRUCTION COMPANY, INC.,
404 PARK AVENUE SOUTH
NEW YORK, NEW YORK 10017,

DEFENDANT.

1.) THAT HERETOFORE, AND ON FEBRUARY 27, 1968, SEAWAY FLOOR AND PAVING COMPANY, INC. OF CLEVELAND, OHIO, DULY FILED ITS PETITION IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION, BEING CASE NO. B68-1103, PRAYING THAT IT BE ADJUDGED A BANKRUPT PURSUANT TO THE ACTS OF CONGRESS AND PURSUANT TO SAID PETITION, SAID SEAWAY FLOOR AND PAVING COMPANY, INC. WAS BY SAID COURT ON SAID DAY DULY ADJUDGED A BANKRUPT; THAT THEREAFTER, AND ON MARCH 21, 1968, PLAINTIFF WAS DULY ELECTED AND APPOINTED BY THE CREDITORS OF SAID SEAWAY FLOOR AND PAVING COMPANY, INC., AS TRUSTEE IN SAID BANKRUPT PROCEEDINGS, AND SAID ELECTION WAS DULY APPROVED BY PAUL J. GNAU, REFEREE IN BANKRUPTCY, BEFORE WHOM SAID PROCEEDINGS WERE PENDING; THAT THEREUPON THE PLAINTIFF DULY QUALIFIED AS SUCH TRUSTEE BY GIVING BOND REQUIRED BY SAID COURT TAKING THE OATH REQUIRED BY LAW, AND ENTERED UPON HIS DUTIES AS TRUSTEE AND BRINGS THIS ACTION IN SUCH CAPACITY.

2.) THAT THE BANKRUPT WAS IN 1967 DOING CONSTRUCTION WORK AS A SUBCONTRACTOR FOR THE DEFENDANT, WHO WAS A CONTRACTOR AND THAT THESE FUNDS WERE BEING HELD IN ESCROW CONCERNING SAID CONSTRUCTION. THAT IN FACT THE DEFENDANT HAD BECOME OBLIGATED TO THE BANKRUPT'S DEBTS AS A CONTRACTOR AND IN EFFECT AT THE TIME OF THE TRANSFER IN NOVEMBER OF 1967 WAS IN FACT AN UNSECURED CREDITOR OF THE BANKRUPT.

KALK,
VALORE
AND
RUBENSTEIN
COUNSELLORS AT LAW
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TEL: 241-0484

C2

3.) THAT ON OR ABOUT NOVEMBER OF 1967 THE DEFENDANT DID IN FACT OBTAIN AND COLLECT FROM AN ESCROW AGENT A CERTIFICATE OF DEPOSIT IN THE AMOUNT OF TWENTY FIVE THOUSAND DOLLARS ($25,000.00) WHICH AT THAT TIME WAS THE PROPERTY OF THE BANKRUPT. THAT THE DEFENDANT DID TAKE THIS TWENTY FIVE THOUSAND DOLLARS ($25,000.00) AS NOTED ABOVE WHICH WERE THE FUNDS OF THE BANKRUPT AS A CREDITOR OF SAID BANKRUPT, FOR AND ON ACCOUNT OF AN ANTECEDENT DEBT AT A TIME WHEN SAID BANKRUPT WAS INSOLVENT AND WAS WITHIN FOUR MONTHS PRIOR TO THE FILING OF THE PETITION IN BANKRUPTCY, WHICH SAID TAKING RESULTED IN THE DEPLETION OF THE ASSETS OF THE ESTATE OF SAID BANKRUPT, THEREBY ENABLING THE SAID DEFENDANT TO OBTAIN A GREATER PERCENTAGE OF HIS DEBT THAN OTHER CREDITORS IN THE SAME CLASS.

4.) THAT AT THE TIME OF SAID TAKING OF SAID FUNDS, SAID DEFENDANT, OR HIS AGENT OR AGENTS ACTING FOR HIM IN SAID MANNER, HAD REASONABLE CAUSE TO BELIEVE THAT SAID BANKRUPT WAS INSOLVENT.

5.) THAT PLAINTIFF DID, BY AND THROUGH HIS ATTORNEY, ON OR ABOUT NOVEMBER, 1968, DEMAND THAT SAID DEFENDANT RETURN SAID FUNDS TO PLAINTIFF AND THAT DEFENDANT HAS FAILED AND REFUSED TO DO SO.

WHEREFORE, PLAINTIFF PRAYS FOR A DECREE THAT THE AFORESAID TAKING OF FUNDS IN THE AMOUNT OF TWENTY FIVE THOUSAND DOLLARS ($25,000.00) FROM THE BANKRUPT TO THE DEFENDANT BE DECLARED NULL AND VOID, AND THAT THE PLAINTIFF HAVE A DECREE AND JUDGMENT IN THE TOTAL SUM OF TWENTY FIVE THOUSAND DOLLARS ($25,000.00), WITH INTEREST THEREON AT THE RATE OF SIX PERCENT (6%) PER ANNUM FROM NOVEMBER, 1967 UNTIL PAID; AND FOR PLAINTIFF'S COSTS AND DISBURSEMENTS INCURRED HEREIN.

HAHN, HISSEN, MARGOLIS & RYAN

By: Marks F. Paskes

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Return by delivering a true copy hereof to ... personally ... day of ... 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
MAR 23 1970
S.D. OF N.Y.

S.E. STEIN, as Trustee in Bankruptcy of the Estate of SEAWAY FLOOR AND PAVING COMPANY, INC.,

Plaintiff,

-against-

RAND CONSTRUCTION COMPANY, INC.,

Defendant.

CIVIL ACTION
FILE NO. 70Civ.715

ANSWER

Defendant, RAND CONSTRUCTION COMPANY, INC., by its attorney, RALPH HEYMAN, answering the complaint herein:

1. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered "1" of the complaint.

2. Denies each and every allegation in paragraph numbered "2" of said complaint, except defendant admits that the bankrupt was doing construction work in 1967 as a subcontractor for the defendant pursuant to a written agreement between the bankrupt and defendant, dated April 7, 1967.

3. Denies each and every allegation contained in paragraph numbered "3" of said complaint, except defendant admits that on or about October 31, 1967, defendant received the sum of TWENTY-FIVE THOUSAND ($25,000.00) DOLLARS under a bond indemnification agreement with the bankrupt dated April 7, 1967, wherein and whereby said bankrupt secured the defendant in said sum for the faithful and full performance of the agreement between said bankrupt and defendant, dated April 7, 1967.

4. Denies each and every allegation contained in paragraphs numbered "4" and "5" of said complaint.

WHEREFORE, the defendant, RAND CONSTRUCTION COMPANY,

04

INC., demands judgment against the plaintiff, dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: Brooklyn, New York,
March 20, 1970.

Ralph Heyman
Attorney for Defendant
Office & P.O. Address
66 Court Street
Brooklyn, New York 11201

Tel. No. ULster 8-4433

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAR 31 1 12 PM '75
S.D. OF N.Y.

S. E. STEIN, Trustee in Bankruptcy of the Estate of Seaway Floor and Paving Company, Inc.,

Plaintiff,

-against-

RAND CONSTRUCTION COMPANY, INC.,

Defendant.

#42127

MEMORANDUM

70 Civ. 715

APPEARANCES:

SELKER, EINBUND, RUBENSTEIN & MOSHER, ESQS.
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By: Eugene I. Selker, Esq.
Of Counsel
GRUNEWALD, TURK, GILLEN & FORD, ESQS.
233 Broadway, New York, N.Y.
By: Norman Turk, Esq.
Of Counsel

Attorneys for Plaintiff

RALPH HEYMAN, ESQ.
Attorney for Defendant

KEVIN THOMAS DUFFY, D.J.

This is an action brought under Section 60 of the Bankruptcy Act, 11 U.S.C. § 96, to avoid an alleged

MICROFILM
MAR 31 1975

preference. Plaintiff is the trustee in bankruptcy of the Estate of Seaway Floor and Paving Company, Inc. (hereinafter "Seaway"), which was a sub-contractor of defendant Rand Construction Company, Inc. (hereinafter "Rand").

On December 21, 1966 Rand was awarded a contract for the erection of certain buildings and facilities for a training school for boys at Skillman, New Jersey. Most of the work was sub-contracted by Rand. Apparently, at the time that Rand obtained the original contract from the State of New Jersey, Seaway contacted Rand in an attempt to obtain the concrete sub-contract. A set of plans and specifications was sent by Rand to Seaway and Seaway, in turn, sent a letter listing references, including three banks and various companies for which it had done work. Since Seaway was based in Cleveland, Ohio, Rand apparently had no knowledge whatsoever of its background or financial status. The officials of Rand, however, were apparently impressed by the technical knowledge of the president of Seaway and because there was an "affirmative action program" required by the State of New Jersey, Rand decided to let the concrete sub-contract to the "minority-owned" Seaway.

As was its usual course of business, Rand had prepared a form sub-contract which included a requirement for a performance bond. The officials of Seaway, however, objected

to this requirement, stating that they had so many jobs going at the same time that they had reached a point where they could no longer obtain such a bond. Those representing Rand then requested that Seaway post with their attorney $25,000, with the thought that this would obviate the necessity for a performance bond. In turn, the officers of Seaway suggested that they put in escrow a $25,000 certificate of deposit from a bank whereby Seaway would be able to draw the interest from the money without permitting it to lay fallow. Rand agreed.

An agreement was entered into simultaneously with the sub-contract, whereby an attorney from New Jersey was to hold the certificate of deposit, in lieu of the ordinary surety bond. Seaway thereupon started the performance of its duties under the sub-contract.

At some point, in the Fall of 1966, Seaway engaged a C.P.A., who testified at trial. The accountant indicated that the books and records which he then had were totally inadequate and had to be reconstructed by him. He further indicated that at that time the financial condition of Seaway was "disastrous", a situation which continued until the bankruptcy petition.

Prior to the entry of the sub-contract, Rand had not requested any financial statement from Seaway, but rather, relied upon a statement that Seaway was owed large sums from

White & Green, which was a major general contractor. As the job progressed, Seaway did not meet certain of its bills. Payments under the sub-contract were billed on a monthly basis, which bills were then submitted to the State of New Jersey, and Rand received its monies and those for the sub-contractors some six weeks after the work was actually done.

On July 28, 1967, Rand sent a letter to Seaway requesting a "sub-contractor's affidavit, waivers of liens by Seaway's main suppliers and forms showing that certain taxes and withholding taxes had been deposited with the Federal depositories." The requested affidavit and exhibits were never produced. But at some point in August 1967, Seaway advised Rand that it was encountering "cash flow" problems and thereafter requested Rand to advance payments for partially completed work, so that on a bi-weekly basis it could meet its payroll at the job site.

Certain of the material men used by Seaway also insisted that Rand guarantee payments to them of the items which they delivered to the job site for installation by Seaway. At the request of one of the officers of Seaway checks were made payable to Seaway and to these material men jointly. It appears that this situation is not uncommon in

the construction industry since the general contractor often wishes to make sure that liens are not posted against the job.

On October 28, 1967, Seaway had become indebted to Rand for payments for a substantial amount of material and the officers of Rand suggested that the $25,000 certificate of deposit be redeemed and payment be made to Rand from this money. The assignment was made and the escrow agent turned over the monies on October 31, 1967. It is important to note that the escrow of the certificate of deposit was such that it was not assigned formally to the Rand Corporation until October 28, 1967. Thereafter, starting on November 2, 1967, Rand was notified that Seaway was in default of its obligations to certain of the unions representing Seaway's employees. The amounts of these obligations were relatively small and apparently Rand advanced the funds to Seaway for the required payments to the unions.

Seaway continued doing the concrete work on the job site until at least January 11, 1968. Between the assignment of the certificate of deposit on October 28, 1967 and January 11, 1968, Rand paid to Seaway direct payments of at least $15,606.61 and payments to the joint order of Seaway and its material men of at least $43,253.85.

Seaway filed for voluntary bankruptcy on February 29, 1968, admittedly within the four month period after the transfer of the certificate of deposit from Seaway to the defendant Rand, particularly since payment of the monies was not received by Rand until November 2 or 3, 1967. It was further stipulated that if a voidable preference be found by this Court that Rand could be considered as receiving a greater percentage of its debts from Seaway than other creditors of the same class.*

Section 60(a)(1) of the Bankruptcy Act, 11 USC § 96(a)(1), provides:

> "A preference is a transfer, as defined in this title, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition initiating a proceeding under this title, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class."

---

* After Seaway abandoned the job, Rand, even with offsets, paid $28,000 more than as sub-contracted to Seaway to complete the job.

But Section 60(b) of the Bankruptcy Act, 11 USC § 96(b), also provides in pertinent part:

> "Any such preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby or his agent acting with reference thereto has at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent." (Emphasis added)

Recognizing that the above sections of the Bankruptcy Act are controlling, this case presents two issues: first, did Rand have a security interest perfected by possession prior to the four month statutory period; and second, did Rand have reasonable cause to believe that Seaway was insolvent at the time the transfer was made.

As to the first issue presented, § 3-104 of the New Jersey Uniform Commercial Code (hereinafter "UCC") classifies a certificate of deposit as a "negotiable instrument." 12A N.J. Stat. Ann. § 12A:3-104. With limited exceptions not relevant to this case, a security interest in a "negotiable instrument" can be perfected only by the secured party's taking possession of the instrument. UCC § 9-304; 12A N.J. Stat. Ann. § 12A:9-304.

Rand argues that it received possession of the instrument when Seaway delivered the instrument to George Bohlinger, Jr., an attorney, pursuant to the April 7, 1967

escrow agreement. The UCC recognizes that possession may be by the secured party himself or by an agent on his behalf, UCC § 9-305, Official Comment 2; 12A N.J. Stat. Ann. § 12A:9-305. However, on the facts of this case I find that Bohlinger was not the "agent" of Rand for the purpose of accepting possession of the certificate of deposit. Indeed, during the relevant time period the interest from the certificate of deposit was paid to Seaway rather than to Rand, a fact inconsistent with Rand's position that it had the requisite "possession" of the certificate of deposit. In arguing that Bohlinger was its agent Rand points to the fact that he was the attorney to whom Rand generally referred its legal matters. However, this argument is considerably weakened by the fact that Bohlinger also did some legal work for Seaway.

Finally, deeming Bohlinger, the escrow holder, to be an agent of any one party to the escrow agreement appears to be inherently inconsistent with the nature of an escrow agreement. As the Court said in In re Dolly Madison Industries, Inc., 351 F.Supp. 1038 (E.D.Pa. 1972), aff'd, 480 F.2d 917 (3d Cir. 1973):

> "Fundamental to the existence of an escrow is the transfer of the escrow instrument into the hands of a third party as depository. Prior to

the happening of any of the conditions upon which the escrow agreement operates, the escrow agent is not empowered to act for either party. Although he may be an agent for one of the parties in other respects, with respect to the instrument in escrow his powers are solely limited to those stipulated in the escrow agreement."

Id. at 1042 (emphasis added).

Thus, the delivery of the certificate of deposit to Bohlinger, the alleged escrow agent, was not delivery to Rand and Rand did not perfect a security interest by possession prior to the four month statutory period.

The second issue raises the question of whether Rand had reasonable cause to believe that Seaway was insolvent at the time the transfer was made. Rand argues that because of the peculiar conditions of the construction industry it could not have "reasonable cause to believe that [Seaway was] insolvent" at the time the transfer was made.

I must hold otherwise. The debtor's non-payment of bills, its calls for advances to meet payroll, its refusal to supply the normal sub-contractor's affidavits, the demand of material men for a guarantee, etc., constitute "reasonable cause that [it] was insolvent."

As Judge Friendly has said:

> "A preference is clearly voidable under § 60b when such a state of facts is brought to the creditor's notice, respecting the affairs and pecuniary condition of the debtor, as would lead a prudent business person to the conclusion that the debtor is insolvent, 3 Collier, Bankruptcy ¶60.53, at 1057-58 (14th ed. 1964). The statute moreover has been properly read as going somewhat beyond this to preclude a creditor from deliberately closing his eyes so as to remain in ignorance of the debtor's condition; where circumstances are such as would incite a man of ordinary prudence to make inquiry, the creditor is chargeable with notice of all facts which a reasonable diligent inquiry would have disclosed and an inquiry of the debtor alone is generally insufficient. Id. at 1063-65."

Hygrade Envelope Corp. v. Gibraltar Factors Corp., 366 F.2d 584, 586-87 (2d Cir. 1966). I find that in this situation Rand either knew that Seaway was insolvent or deliberately closed its eyes to remain in ignorance.

In conclusion, I find that the transfer of the funds to Rand constituted a voidable preference under

§ 60(a) and (b) of the Bankruptcy Act, 11 USC § 96(a) and (b).

Settle judgment on notice.

Thomas Duffy
U. S. D. J.

Dated: New York, New York
March 28, 1975.

This Agreement

made this 7 day of April, 1967

by and between Rand Construction Company, Inc., 404 Park Avenue South, New York, N.Y. 10016
First Party, and Beauty Floor & Paving Co., Inc.
of 11206 Union Avenue, Cleveland, Ohio 44105 Second Party.

Whereas, the First Party has heretofore entered into a contract in writing (hereinafter referred to as the General Contract) with the State of New Jersey, Division of Purchase and Property

hereinafter referred to as Owner, to furnish materials and perform labor necessary for the construction of Training School for Boys at Skillman, N.J., Job No-713, Contract 1 including Addenda 1 & 2.

pursuant to certain plans and specifications referred to in said General Contract, copies of which general contract, plans and specifications are on file in the office of the First Party and have been examined by the Second Party.

Witnesseth, that in consideration of the covenants and agreements herein contained the parties hereto agree as follows:

ARTICLE I. The term "Architect" as hereinafter employed shall be deemed to include the architect directing the work as agent of the Owner, or any other person authorized by the general contract to direct or pass upon any matter or thing connected with the performance of the general contract.

The term 'Contractor' or 'General Contractor' when used in the general contract documents shall be deemed to have reference to the Second Party in so far as it has application to the work covered by this subcontract.

The words "he," "him" or "his" in referring to the second party includes "it," "its," "they," "them" or "their."

ARTICLE II. The First Party shall pay the Second Party the sum of ONE HUNDRED SEVENTY TWO THOUSAND DOLLARS, NO CENTS. ($172,000.00) dollars.

Progress payments shall be upon the basis of 90% of the value of the work performed.

ARTICLE III. The second party shall under the direction of the first party, and to the satisfaction of the architect, the owner of said premises, and the first party, perform and complete the following work:

Furnish all labor, materials, equipment, tools and supervision to perform and complete all concrete work in accordance with the contract drawings, specifications and Addenda 1 & 2.

Include without limitation the following:

1) All concrete work as required by section 3 of the specifications.
2) Unloading and placing of all reinforcing bars and mesh. Bars will be furnished by the First Party, the Second Party shall furnish all required tie wire.
3) Furnishing, placing, compacting and fine grading of porous fill under slabs on grade.
4) All required hand work to trim the trenches for footings and thickened areas in slabs.
5) All layout work as required to perform its work. Layout and stakes for the excavation will be performed by others.
6) All perimeter insulation, curing, expansion joints, vapor barrier, hardener etc.
7) Setting of all miscellaneous metal and other items embedded in concrete. Setting anchor bolts and grouting base plates.
8) All required concrete additives, admixtures and integral waterproofing.
9) All cleanup of debris resultant from its work.
10) All site concrete work, foundations for flagpole, basketball and baseball backstops, footings for name panel wall, include setting of sleeves and reinforcing bars furnished by others.
11) All concrete curbs and walks including fine grading and furnishing and placing of reinforcing mesh.

Site concrete work shall be performed in accordance with the requirements of section 23 of the specifications. For payment purposes it is agreed that the value of site concrete work is THIRTY THOUSAND DOLLARS, NO CENTS ($30,000.00) which is included in the price stated above in Article II.
All the above as required by the Base Bid and Alternate GC-6.

Option
At the First Party option the Second Party agrees to perform all additional concrete work including installation of tie rods for laminated wood arches as required by Alternates GC-1, GC-5 & GC-7 for an additional sum of THIRTY SIX THOUSAND DOLLARS, NO CENTS ($36,000.00).

Unit Prices
The Second Party agrees that unit prices 10,11,12,13 and 15 as listed on page 6 "Proposal Form" of the specifications are part of this agreement, except that "Add" unit prices shall be decreased by 10%.

Guarantee
~~In order to insure faithfull performance under this agreement the Second Party agrees to deposit the sum of TWENTY FIVE THOUSAND DOLLARS, NO CENTS in escrow account to be held by Ralph Hoyman Esqr, Attorney for hand until satisfactory completion of all work to be performed by it.~~

Exceptions
Lightweight insulating nailable concrete is not included.

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All of the above work shall be performed agreeably to all the contract drawings and specifications and any addenda and modifications thereof made by the said architect and to the dimensions and explanations thereon, therein and herein contained and any detailed drawings of said architect hereafter furnished, subject to all general and special clauses and conditions contained in said contract, specifications, addenda and modifications, according to the true intent and meaning thereof and of these presents including all labor, engineering services for lines, grades, elevations, etc., and materials, incident thereto or as are usually performed or furnished in connection with such work, and regardless of whether the labor or material hereby sublet are referred to as under one or more headings in the specifications, it being the intention that all work usually performed by the trades covered by this agreement and required by the general contract, shall be performed by the second party. All such labor and material shall be the best of their respective kinds and the second party shall provide at his own expense, all tools, scaffolding, hoisting facilities for materials, elevator service for employees, implements, water, heat, light, power, electric service, cartage, storage space, shop drawings, tests, molds, photographs, models, guarantees, samples and permits necessary for the due and proper performance of this contract and pay all inspection fees, royalties and license fees and save the first party harmless from loss or annoyance on account of claims or suits of any kind for infringement of patents in connection with the work. If drawings or specifications conflict, the decision of the said architect must be obtained before proceeding with the work, otherwise the second party will be held liable to make any change nec[illegible] to correct any such conflict without expense to the first party. Any work or material shown on the plans and not mentioned in the specifi[illegible] vice-versa, shall be taken as shown and mentioned in both. The approval by the architect of drawings submitted by the second party shall not [illegible] the second party from changes or deviations not specifically called to the architect's attention in writing nor for errors therein. It is the intention that in so far as the portion of the general contract being performed by the second party is concerned, the second party assumes all the obligations of the first party under the general contract and shall be required to do all things and be bound by all rulings of the architect to the same degree as the first party is bound and the second party, will at all times, as demanded by the first party, execute all documents and as many copies thereof as required, and do all things deemed necessary or convenient by the first party to carry out the terms of the general contract and obtain payment thereunder. Should the first party supply any thing or facility used by the second party which the second party has agreed to supply for his own use, then the second party shall reimburse the first party therefore or where the second party and others have obtained the use or benefit of such thing or facility, then the second party shall bear such proportion of the cost thereof as the amount of this subcontract bears to the total value of the contract or work done by all enjoying the use of such thing or facility. The second party shall furnish, locate and install all sleeves, inserts, etc., required to complete his work.

ARTICLE IV. Should it appear that the work hereby intended to be done or the material to be furnished, or any of the matters relative to said work or materials, are not sufficiently detailed or explained on the said drawings, or in the said specifications, the second party shall apply to the first party for such other and further drawings or explanations as may be necessary, and shall conform to the same without extra compensation, as part of this contract. In event of any doubt or question arising respecting the true meaning of the drawings and specifications, reference shall be made to the architect, whose decision thereon shall be final and conclusive. All work to be done and materials furnished must comply with the laws, rules and regulations of the United States, the State, the Municipality, and the various departments and agencies thereof, and all labor and material in addition to that shown on the plans and specifications necessary to comply with said laws, rules and regulations, will be furnished by the second party hereunder without extra charge. The second party agrees to indemnify and save harmless the first party from and against [illegible] and expense caused or occasioned directly or indirectly by his failure to so comply.

ARTICLE V. Should any alteration, addition or omission be required in the work shown or described by the drawings or specifications, the second party shall promptly furnish to the first party a detailed breakdown showing the difference in quantity and value of labor and material effected by such alteration, addition or omission, and a fair and reasonable valuation of the work altered, added or omitted shall be made, and the sum herein agreed to be paid for the work according to the original plans, specifications and any addenda or modifications thereof shall be increased or diminished as the case may be, but any such change shall not abrogate, vary, avoid, or affect the terms of this contract, or extend the time of completion fixed hereby, unless expressly agreed in writing. The first party shall have the right, in event of termination of the general contract for any cause, at any time, to cancel this contract and require the second party to cease work thereon in which case the first party shall indemnify the second party based on the contract amount against any damage directly resulting from cancellation except that the second party shall not be entitled to compensation for prospective profits or material unfurnished and except that in the event the general contract is terminated by any action or by any default of the owner, or in event the work is stopped by Court Order or public authority, the first party shall be liable only for the amount actually received by it for the work performed by the second party less its proportionate share of said sum. In case the amount to be added or deducted from the contract pri[illegible] by reason of changes or termination is not agreed to, the valuation of work added or omitted shall be referred to three arbitrators to be appointed one by each of the parties and the third by the two so chosen, but the first party shall not be liable for a greater sum than it obtains from the owner by reason of additions, ommissions or termination, less a reasonable overhead and profit to the first party, and the recovery by second party shall be conditioned upon receipt of payment therefore, from the owner. In the event of controversy as to the value of work added, omitted or terminated, the first party may inspect the books, contracts and records of the second party, who shall make same available for such inspection upon demand. The failure or refusal of second party to permit such inspection shall preclude any recovery by second party. In event of a deduction, the deduction taken by the owner shall be controlling. First party shall not be liable for any damages resulting from any default, breach or interference by the owner except to the extent it may recover therefore on behalf of second party.

The first party, at its election, may appeal from any ruling or institute suit to recover damages or for extra work, or by reason of any deduction or refusal to pay by the owner for any reason involving the work of the second party. In that event, the second party shall pay the cost of appeal or action and shall render every assistance without cost to the first party, in the prosecution of said appeal or suit. The second party shall be bound by the determination of the o[illegible]er or, in event of appeal or s[illegible]it, by the determination in said appeal or suit, and shall be entitled to its proportion of any recovery, less ove[illegible]ead and profit to the first party and less the expenses and attorneys' fees in prosecuting such appeal or suit. Where work is required to be done and the parties cannot agree as to whether such work is extra work or as to valuation by reason of any modification as herein provided, the performance of same shall not be delayed, but the second party shall nevertheless proceed with the work upon the written order of the first party. The failure of the second party to proceed as herein provided shall constitute a material breach hereof regardless of whether or not the second party is correct in its contentions, it being understood that the progress of the work may not be delayed by any controversy between the parties.

ARTICLE VI. The second party shall provide both in its shops and those of its suppliers and subcontractors and at the building, sufficient, safe and proper facilities at all times for the inspection of the work by the architect or the first party and must upon request of the first party produce all vouchers showing the quality of the material used and must upon request take all steps necessary to procure the approval of materials and must deliver samples thereof and subject such materials to tests whenever required. The second party shall, within twenty-four hours after receiving written notice from the first party to that effect, proceed to and remove from the grounds or building all materials condemned by the architect or the first party, whether worked or unworked, or take down all portions of the work which the architect or the first party shall condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, or to the conditions of this contract. The second party shall cover, protect and exercise due diligence to secure the work from injury, and all damage happening to the same before final acceptance shall be made good by the second party. The second party will do all necessary cutting, fitting, repairing and patching of the work included herein for and after all other contractors and mechanics, and maintain said work as required by said general contract without expense to the first party and will remove from said premises and site all dirt and rubbish which may result from the work done hereunder from time to time as the work progresses and in event of controversy as to whether the rubbish is that of the second party or any other subcontractor or person or party on the site, the determination of the first party as to the liability for the removal of said rubbish shall be final.

ARTICLE VII. The second party shall and will proceed with the said work, and every part and detail thereof, in a prompt and diligent manner, and to facilitate the performance thereof, the foreman of the second party shall take orders directly from the Superintendent of the first party and the second party shall and will do the several parts of the work at such times and in such order as the first party may from time to time direct, and in the event the project is divided into sections, the second party shall prosecute, if required by the first party, all sections simultaneously, and shall and will proceed with and wholly finish the said work according to the said drawings, specifications and this contract, in such time as not to delay the other trades and to insure completion of the general contract within the time fixed herein, the general contract time being of the essence of this contract. Second party shall work overtime, Saturdays and Sundays at the direction of the first party without additional cost to the first pary if in the judgment of the first party such overtime and Saturday and Sunday work is necessary due to delays of second party.

The second party agrees that if it shall delay the progress of the work, so as to cause any damage, for which the first party shall suffer or become liable, it shall make good to the first party any such damages, all inclusive, and the assent or permission of the first party to the delayed finishing of the work shall not be construed as a waiver of the agreement to make good any damage caused by such delay or default or a forfeiture of such damages.

ARTICLE VIII. The second party shall not cause any unnecessary hindrance or delay to other contractors at said site or building, and shall bear cost of all damages done to the work of such other contractors by it or its employees, and will repair all damages to adjoining streets, sidewalks, and premises done by it or its employees, and shall be directly responsible to any other contractor or subcontractor whose work is so damaged, and in the event the work of the second party is damaged by any other subcontractor or contractor on the site, such other contractor and subcontractor shall be directly responsible to the second party and the second party will not seek compensation or damages from the first party by reason thereof.

Should the second party be obstructed or delayed in the commencement, prosecution or completion of the work because of conditions not attributable to the second party, and which by the terms of the general contract may be grounds for an extension of time, it shall within twenty-four hours thereafter make claim therefor in writing, and the first party shall award and certify the amount of additional time to be allowed, if any, said time to be the same as shall be allowed by said owner to the said first party under the general contract aforesaid, for said delay. The first party shall have the right, at any time, to delay or suspend the commencement or execution of the whole or any part of the work herein contracted to be done, or vary the sequence of performance thereof, without compensation to the second party other than extending the time for completing the whole work for a period equal to that of such delay or suspension. Progress Schedules may from time to time be modified to conform to acceleration, delays, suspensions or variances and second party shall conform its progress thereto.

ARTICLE IX. The second party shall make no claim for extra or additional work unless the same shall be done in pursuance of a written change order executed by an executive officer of the first party. If in the performance of the general contract, the first party shall order in writing extra work to this contract but not extra to the general contract, at the option of the first party, the second party shall charge either an agreed lump sum or at the option of the first party, the cost of said work plus ten per cent (10%) for profit, overhead, supervision and tools and which total shall constitute the entire amount due second party for the extra work. Should first party require such work to be performed on a lump sum basis and the parties fail to agree on the amount, the same shall be determined by arbitration as provided in Article V; meantime the work shall proceed.

In the event the second party claims any work directed to be performed by it involves extra or additional work, it shall within three days after receipt of such direction and before the next ensuing payment and before proceeding therewith make written claim therefor giving in detail the basis of its contention and a detailed breakdown showing separately the additional cost of labor and material. Upon written direction of the first party, second party shall promptly proceed with such work, and should the first party rule said work is not extra or additional, the second party may reserve its claim therefor by written protest given within three days after notice to proceed. Claims for damages by reason of any act or omission of the first party shall be made in writing within three days after the initiation of such act or omission. Failure to make written notice of claim within the time and in the manner as herein provided shall constitute a waiver thereof and no recovery therefor can be had. In no event shall first party be liable for work performed under protest except to the extent it may recover therefor from the owner less expenses, etc. as provided in Article V.

It is understood and agreed that the functions and powers of the employees of the first party are strictly limited to the execution of the work hereunder, as defined by this contract, and that they have no authority to make, permit or authorize any alteration, change or departure in or from the terms and provisions of this contract or the plans and specifications, or to waive any right of the first party.

The second party hereby distinctly and expressly declares and acknowledges that before signing this contract it has carefully read the same and the whole thereof together with and in connection with said plans and specifications; that it has made such examination of this contract and of said plans and specifications, and the location where said work is to be done, as to enable it to thoroughly understand the intention of the same, and the requirements, covenants, agreements, stipulations and restrictions contained in this contract, and the general contract and in said plans and specifications; and distinctly agrees that it will not hereafter make any claim or demand upon the first party, based upon or arising out of any alleged misunderstanding or misconception on its part of the said requirements, covenants, stipulations and restrictions; and that any information given to it by the first party or others as to the quantities of the work, or as to the particular plans relating to its work, prior to, or during the progress of the work shall have no bearing or effect whatsoever upon the total amount to be done or paid for in the final settlement or otherwise vary the contract requirements, and second party will not make any claim for delay or damage by reason of the condition of the site, roads or utilities and first party shall not be responsible for difficulty of access and shall not be required to provide access to the site or any part thereof.

ARTICLE X. Regardless of the provisions of the general contract or specifications, the first party will not be required to provide any watchmen service for the protection of the second party and will not, in any manner, be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part or parts thereof respectively, or any of the materials or other things used or employed in finishing or completing the said work. The second party shall hold the first party harmless from all liability, loss, cost or damage from claims for injuries or death from any cause, while on or near the project, of its employees or the employees of its subcontractors, or by reason of claims of any person or persons for injuries to person or property, from any cause occasioned in whole or in part by any act or omission of the second party, its representatives, employees, subcontractors or suppliers and whether or not it is contended the first party contributed thereto in whole or in part, or was responsible therefor by reason of non-delegable duty. The first party may retain any money due or to become due hereunder, sufficient to indemnify it against such injuries, claims, suits, actions, costs or damages should any such claim arise.

The second party shall, before commencing work and until final completion and acceptance of the general contract, maintain workmen's compensation insurance, public liability insurance and contractual liability insurance in amounts specified in the General Contract, but not less than $300,000.00 and $500,000.00 public liability, and property damage liability insurance of not less than $100,000.00 and $300,000.00 limits protecting him and his Subcontractors against all claims for damages for personal injuries, or death or property damages sustained by persons other than employees, resulting directly or indirectly from operations under this agreement. Such insurance shall be carried in a company or companies acceptable to the first party. Second party shall not commence work under this contract until he has obtained all insurance required under this article and not until such insurance shall have been approved by the first party, nor shall the second party sublet any part of his work without assuming full responsibility for requiring similar insurance from his Sub-Contractors and shall submit satisfactory evidence to that effect to the first party. Compliance with this Article shall be evidenced by furnishing to the first party satisfactory certificates of insurance from acceptable carriers which shall contain a statement that the policy covers all operations at the site of this work and that such policy will not be cancelled until at least ten (10) days written notice by registered mail to that effect has been given to the first party. Failure of second party to provide said insurance may, at the option of the first party, result in this agreement being terminated as provided in Article XII, or in lieu of such action, the first party shall have the right to maintain all said insurance for and in the name of second party and second party agrees to pay the cost thereof. Compliance by second party with the foregoing requirements as to carrying insurance and furnishing certificates shall not relieve second party from liability under this Article. The insurance limits mentioned in this Article are minimum unless those required by the general contract are more, in which case, the limits in the general contract shall be minimum.

ARTICLE XI. The first party will not, under any circumstances, be answerable or accountable for any fire or theft loss suffered by the second party. No materials delivered on the premises to form part of the work shall be removed therefrom without the consent of the first party, excepting only such surplus material as may remain after completion of the work. ~~The First Party shall obtain fire insurance covering the value of labor and material installed and the Second Party shall contribute to the First Party such proportion of the premiums charged as its contract price bears to the general contract price.~~

ARTICLE XII. The second party shall employ such number of men as the first party may direct and should the second party at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality and quantity, or become insolvent, or unable to pay its obligations as they mature, or in the opinion of the first party, fail in any respect to prosecute the work with sufficient promptness and diligence to insure its completion within the time herein provided, or fail in the performance of any of the agreements on its part herein contained, the first party shall be at liberty, after two days' written notice to the second party, delivered personally or mailed to or left at its place of business, to terminate this contract or any part thereof and may use any materials, implements, equipment, appliances or tools furnished by or belonging to the second party in completing the work and first party may take over any sub-contracts or purchase orders of second party, which sub-contracts and purchase orders second party does hereby assign to first party, effective upon termination or taking over of the work of second party in whole or in part, as herein provided, or said first party may at its option (said option, if exercised, to be expressed in said notice above-mentioned) itself or through a subcontractor furnish any such labor and material or both, in whole or in part, and offset the cost thereof and expenses therefor against any money due or to become due hereunder. Second party shall be liable for any excess cost of completion of work terminated or performed by first party or its subcontractor in whole or in part and shall be entitled to no further compensation whatsoever in the event of complete termination of its unperformed portion of its contract.

ARTICLE XIII. Any provision of the general contract documents, notwithstanding, any taxes imposed or which may hereafter be imposed by Municipalities, State or Federal government upon the value of work or material furnished by the second party shall be paid by the second party and the second party accepts exclusive liability for any contributions for unemployment, social security, or other insurance covering the employees of the second party, and the addition to this contract price of any tax imposed now or hereafter on labor or materials furnished by the second party is prohibited. The Contract price, on all billings, shall be adjusted to separately indicate use or sales taxes included in the charges made.

ARTICLE XIV. The second party will not enter into any contract with any person other than the first party for the modification or addition to any portion of the premises involved herein pending completion and acceptance of the project and will handle all matters relating to the project solely through the first party unless otherwise directed by the first party in writing.

ARTICLE XV. The second party shall furnish a competent representative who shall be kept constantly at the site during the performance of its work to represent the second party for the purpose of receiving notices, orders and instructions and who shall when called upon by the first party report the general progress of the work at the building or elsewhere.

ARTICLE XVI. Whenever notice in writing may be given to the second party as herein provided, such notice may be mailed to the last known address of the second party.

ARTICLE XVII. The second party agrees not to display signs about the premises any sign, trade mark or other advertisement and to remove the same when so directed by the first party.

ARTICLE XVIII. The assignment by the second party of this contract or any interest therein, or of any money due or to become due by reason of the terms hereof without the written consent of the first party shall be void. Any assignment if consented to will be deemed subject to labor preferences and liabilities imposed upon the first party for unpaid obligations of the second party, or for any other liabilities for which the second party might be held responsible.

ARTICLE XIX. The second party shall procure its materials from such sources and employ such labor subject to such terms and conditions as will result in harmonious labor relations on the site and prevent strikes by other trades. In the event of a strike resulting from a union jurisdictional dispute involving or affecting the labor employed by the second party, then the first party may, at its option, terminate this agreement but shall compensate the second party for the value of labor and material furnished, proportioned upon the contract price.

ARTICLE XX. The second party shall promptly place all orders or subcontracts for labor or materials to be supplied hereunder so that same shall be available when required for the orderly progress of the general construction. The second party, on demand, shall advise the first party of the time when and with whom such orders or subcontracts have been placed and, from time to time, the status thereof and authorizes the first party to communicate as to such status.

ARTICLE XXI. Progress payment for work performed during any calendar month shall be payable within ten days after payment therefor is received by the first party from the owner, provided that the second party has delivered to the first party in proper triplicate form a requisition at least five days prior to the requisition date established between first party and the owner and which shall be audited and approved by the first party. The estimate of the architect as to the value of the work performed shall be binding on the second party for the purpose of computing the value of the work performed by him at such ratio to the contract price herein as the value so fixed bears to the price upon which the architect based his computation. The balance shall be payable thirty days after the general contract is completed and accepted and the last payment received from the owner, and all drawings, plans and specifications returned to the first party, but in the event any portion of such balance is retained by the owner as guarantee covering the work involved herein, the first party may retain from the second party an equivalent amount until payment thereof is released by the owner, it being understood that the second party shall guarantee the labor and material installed by him, for such period and to the same extent as the first party is required by the general contract to guarantee the same. No payment to be made until the second party shall have done sufficient work to fully equal in value the amount of said payment.

PROVIDED, that before each payment, upon demand of first party, the second party shall furnish to the first party an affidavit on a form satisfactory to the first party indicating in detail the unpaid obligations incurred by the second party in connection with or as the result of the performance of this sub-contract, to whom incurred, the amount due or to become due therefor, and, if demanded, procure the delivery to the first party by the material supplier of duplicates of all material invoices and statements, and present receipted bills showing payment of all such obligations incurred and duly receipted certified payrolls indicating full payment to each of his employees of wages earned during the preceding payroll periods and provided that, prior to final payment, the second party, if demanded, shall deliver to the first party, in addition to the affidavits required, duly executed releases of the first party from each of the persons to whom obligations were incurred, together with a similar release executed by the second party. Should the first party pay the final payment or any part thereof without the presentation by the second party of such release, then such payment, and the acceptance thereof, shall in itself constitute a release to the first party by reason of any and all things done or performed or pertaining to or arising out of the relationship of the parties hereto as a result of this contract, or the presence of the second party on the site, whether in contract or tort, excepting only any such sums withheld as a warranty fund or any additional compensation or damage obtained from the owner to which the second party may thereafter become entitled as herein provided. First party at its sole option, may make prepayments without affecting the terms hereof nor the liability on any bond given by second party.

In the event at any time any obligations incurred by the second party in connection with or as the result of the performance of this sub-contract are unpaid, whether due or to become due, the first party is authorized to make such payment direct out of any moneys payable to the second party, and the first party may at any time if it so desired make direct payment to the labor employed by the second party, and the second party for itself and its sub-contractors, material supplier and employees, hereby expressly waives the right to file any lien or claim against the premises or money earned by the first party; and further, that if in violation hereof, there shall be any lien, or other claim for moneys due or to become due for which if established, the first party might be liable, and which would be chargeable to the second party, second party shall immediately satisfy or bond the same, or the first party shall have the right to bond said lien or claim or otherwise discharge the same and to retain out of any payment then due or thereafter to become due, an amount sufficient to completely indemnify it against such lien or other claim with interest together with the expense incident to discharging such lien or claim or defending suit to enforce such lien or other claim, including any premiums charged for a bond and any attorneys' fees and disbursements all of which the second party agrees to pay. Should the first party give the second party notice of any unpaid claim for obligations incurred by second party, the second party shall be estopped from disputing liability for any such claim unless within three days after such notice it indicates to the first party in writing by registered mail that there is some sum different than that demanded owing, or that there are no sums owing. And should there prove to be any claim after all payments are made, the second party shall refund to the first party all moneys that the latter may be compelled to pay in discharge and defending the same. Any lien or other claim, until satisfied or withdrawn, shall preclude any and all claim or demand for any payment whatever under or by virtue of this contract.

ARTICLE XXII. It is further mutually agreed between the parties hereto that no payment made hereunder, including the final payment, shall be evidence of the performance of this contract, either wholly or in part, against any claim of the first party, and no payment shall be construed to be an acceptance of any defective work or as a waiver of any of the provisions of this contract and any waiver of any of the terms hereof by the first party shall be without prejudice and such waiver shall not be deemed to be continuing or in any way affecting the other terms, provisions or covenants of this contract.

~~ARTICLE XXIII. The first party may at any time prior to or during the progress of the work demand that within ten days after such demand the second party deliver to the first party a duly executed surety company performance and payment bond by a company satisfactory and financially satisfactory to the first party in the amount of this contract and in a form satisfactory to the first party, and without expense to the first party. The failure of the second party to comply herewith shall be ground for termination as provided in Article XII.~~

ARTICLE XXIV. Should one or more other contracts, now or hereafter, exist between the parties hereto or with any affiliated corporation or company of the first party, concerning this or any other construction project, then a breach by the second party of any contract, may at the option of the first party, be considered a breach of all contracts; and in that event the first party may terminate any or all of the contracts so breached, or may withhold moneys due or to become due on any such contracts, and apply the same toward payment of any damages suffered on that or any other such contracts.

ARTICLE XXV. Before proceeding with the work under this contract, the second party will accurately check all previous and surrounding work done by other trades and determine the correctness of same, and failure on its part to detect or report discrepancies will relieve the first party of any and all claims to recover cost, expense or damage resulting therefrom.

ARTICLE XXVI. And the said parties for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained.

ARTICLE XXVII. This agreement cannot be changed or terminated orally.

ARTICLE XXVIII. This agreement is made conditional upon the approval of the second party by the Owner or Architect where such approval is required by the terms of the general contract. The second party shall not sublet any portion of the labor or material involved without first obtaining approval of its prospective Sub-Contractor or supplier by the first party and by the Owner or Architect where such approval is required by terms of the general contract.

In Witness Whereof, the parties hereto have executed this contract the day and year first above written.

RAND CONSTRUCTION COMPANY, INC.

By [signature] (LS)
LEONARD HILTON, SECRETARY

SEAWAY FLOOR & PAVING CO., INC.

[signature] (L.S.)
President

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EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Pl's Exh. F for Id. 9/3/74

THIS AGREEMENT, made the 7TH day of April, 1967, between RAND CONSTRUCTION COMPANY, INC., a corporation of the State of New York, having a principal office at 404 Park Avenue, South, New York 16, New York, hereinafter called "Contractor," party of the First Part, and SEAWAY FLOOR & PAVING CO., INC., a corporation of the State of Ohio, having a principal office at 11206 Union Avenue, Cleveland, Ohio, hereinafter referred to as "Sub-Contractor;"

WHEREAS, the Contractor has heretofore entered into a contract with the State of New Jersey, hereinafter referred to as "Owner," for the erection of certain buildings and facilities at Skillman, New Jersey, said contract being dated THE 21ST OF DECEMBER, 1966, and being identified as contract No. 1, GENERAL CONSTRUCTION TRAINING SCHOOL FOR BOYS, SKILLMAN, NEW JERSEY; and

WHEREAS, the Contractor and Sub-Contractor have entered into a sub-contract covering the construction of certain cement and concrete work in connection with the construction of the buildings, structures and facilities to be constructed under the terms of the contract between the Contractor and the Owner, which said sub-contract is dated THE 7TH DAY OF APRIL, 1967, and covers construction ~~shown on sheets Nos.~~ IN ACCORDANCE WITH PLANS AND SPECIFICATIONS SET FORTH IN THE PRINCIPAL AGREEMENT BETWEEN THE CONTRACTOR AND OWNER AFORESAID, ~~of plans and entitled~~: "

and

WHEREAS, the Contractor has agreed to waive, and has waived, the requirement that the Sub-Contractor post with the Contractor a Surety Bond as ordinarily required.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH,

1. The Sub-Contractor acknowledges that it is held and firmly bound unto the Contractor in the sum of $25,000.00 for payment of which well and truly to be made it hereby binds itself, its successors and assigns.

The condition of the above obligation of this Paragraph 1 is such that if the Sub-Contractor shall well and faithfully perform all of the things required by it to be performed in accordance with the terms of the said sub-contract and in accordance with the plans and specifications therein referred to, and shall, in addition, pay all lawful claims of its

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sub-contractors, materialmen, laborers, persons, firms or corporations for labor performed or materials, provisions, provender or other supplies, teams, fuels, oils, implements or machinery used or consumed in, upon for or about the work and construction required by the Sub-Contract to be performed, then this obligation shall be void, otherwise, to remain in full force and effect.

2. As security for the above obligation, the Sub-Contractor has delivered to the Contractor certain Certificate of Deposit of Trenton Trust Company of Trenton, New Jersey, bearing date April 7, 1967, known as Certificate No. CD 7937, certifying that the Sub-Contractor has deposited with Trenton Trust Company the sum of Twenty-five thousand ($25,000.00) Dollars as therein indicated. The receipt of which by the Contractor is hereby acknowledged. The delivery of said Certificate of Deposit by the Sub-Contractor is made in escrow, subject to the following terms and conditions which the Contractor hereby accepts:

a. Provided that the Sub-Contractor complies with the terms of said sub-contract and with the conditions of the obligation set forth in Paragraph 1 hereof, and said work shall be accepted and approved for payment by the Owner, the Contractor shall immediately and without demand return said Certificate of Deposit to the Sub-Contractor.

b. In the event that any claims or back-charges are made by the Owner with respect to the Sub-Contractor's work, which the Sub-Contractor shall not rectify within the time required by the Sub-Contract or within such other time as the Owner and Contractor may agree, or in the event that any claims by laborers, materialmen or suppliers for labor, material or supplies used or consumed in connection with said sub-contract shall be made against the Owner or Contractor which the Sub-Contractor shall not pay or settle, then or in either event, the Contractor may, unless the Contractor or Owner is withholding monies due the Sub-Contractor under the terms of said sub-contract in sums sufficient to pay any and all such claims, retain possession of said Certificate of Deposit in escrow to guarantee the payment of any back-charge by the Owner or any judgment recovered against the Contractor by any of the Sub-Contractor's laborers, materialmen or suppliers.

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The Contractor shall, in any event, return such Certificate of Deposit to the Sub-Contractor upon receipt of satisfactory evidence that all such claims have been paid or satisfied by the Sub-Contractor and shall in no event retain such Certificate for a period longer than one year from the date of acceptance by Owner of the work to be performed under said contract.

IN WITNESS WHEREOF, the Contractor and Sub-Contractor have caused this Agreement to be executed the day and year first above written.

RAND CONSTRUCTION COMPANY, INC.

Attest:

Secretary

President

SEAWAY FLOOR & PAVING CO., INC.

Attest:

Virgil Galatree
Vice President

James McEwan, President

55-78
312

TRENTON TRUST CO
OCT 31 1967
R.A.F.

TRENTON TRUST COMPANY

TRENTON, N.J.

April 7, 1967 CD 7937

Seaway Floor and Paving Co., Inc. - - - - - - - - - HAS DEPOSITED IN THIS BANK

Twenty Five Thousand and no/100 - - - - - - - - - DOLLARS $25,000.00

PAYABLE TO them UPON THE RETURN OF THIS CERTIFICATE PROPERLY ENDORSED 3 MONTHS FROM DATE, WITH INTEREST THEREON AT THE RATE OF 5 PER CENT PER ANNUM FROM DATE. THIS CERTIFICATE SHALL BE AUTOMATICALLY RENEWED AT MATURITY FOR SUCCESSIVE PERIODS OF 3 MONTHS EACH UNLESS PRESENTED FOR PAYMENT BY THE PAYEE WITHIN 10 DAYS AFTER THE EXPIRATION OF ANY 3 MONTHS' PERIOD. THE BANK RESERVES THE RIGHT NOT TO RENEW THIS CERTIFICATE AT THE EXPIRATION OF ANY 3 MONTHS' PERIOD UPON MAILING TO THE PAYEE AT HIS ADDRESS LAST SHOWN ON THE BANK'S RECORDS A NOTICE OF ITS ELECTION NOT TO RENEW THE CERTIFICATE.

CERTIFICATE OF DEPOSIT
NOT SUBJECT TO CHECK

John A. Stonaker

PAY TO THE ORDER OF RAND CONSTRUCTION COMPANY, INC.

Seaway Floor and Paving Co., Inc.

By Virgil Oglatree, Vice-Pres.

PL
EXHIBIT
U.S. DIST. COURT
S.D. OF N.Y.
3

IES

I. E. SHAFFER & CO.
EMPLOYEE BENEFIT PLAN ADMINISTRATOR

120 WEST SEVENTH STREET
PLAINFIELD, NEW JERSEY
TEL PLAINFIELD 7-3666
AREA CODE 201

October 17, 1967

Rand Const. Co.
404 Park Avenue South
New York, N. Y. 10016

Gentlemen:

The total amount due our office for the month of September from Seaway Floors and Paving Company is $382.00 for the Welfare Fund and $382.00 for the Pension Fund for 1528 hours.

If you should have any questions concerning this matter, please do not hesitate to contact our office.

Very truly yours,

LABORERS LOCAL 779 WELFARE &
PENSION FUNDS

I. E. Shaffer
Administrator

jy

PL
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

EX M

August 31, 1967

Seaway Floor & Paving Co.
11205 Union Avenue
Cleveland, Ohio 44105

Re: Training School for Boys
Skillman, New Jersey

Attention: Mr. J. McEwen

Gentlemen:

Please find enclosed copies of letters we were forced to write to various trade unions in order to keep your job manned.

We have been informed that you owe them three month's payments except for the laborers who received June's check today to replace one which had previously failed to clear.

Investigation here had brought the following information to light:

1. You did not list these debts on your last sworn affidavit.
2. Izzie has verbally stated that all these payments were up to date.

We ask you to please verify that the information as given to us by the Business Agents is correct and we also ask you to info[illegible] us immediately as to your plans for discharging these obligation[illegible]

Bear in mind that unless these are cleared up within the n[illegible] two weeks the agents will refuse to permit the men to work on the [illegible]

We await your immediate reply.

Very truly yours,

RAND CONSTRUCTION COMPANY, INC.

Paul H. Lauer, P.E.
Project Manager

PHL/CT/rms
cc: Accounting
Enclosure

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

5

EX

File # 16

August 31, 1967

Laborers Local Union # 779
45 Union Street
Somerville, New Jersey

Re: Training School for Boys
Skillman, New Jersey

Attn: Mr. Lou Conti

Gentlemen:

Confirming our telephone conversation today, we will guarantee payment of Pension and Welfare funds owed to you by the Seaway Floor & Paving Co., Inc. for the Skillman Training School for Boys.

As discussed, we will need some additional time to contact Seaway and discuss this payment with them. This should be no more than a few weeks.

We appreciate your decision to allow your men to continue working while we straighten this matter out since it benefits both the men and the job.

You will be hearing from us or Seaway shortly.

Very truly yours,

RAND CONSTRUCTION COMPANY, INC.

Paul H. Lauer, P.E.
Project Manager

PHL/rms
cc: Bert Ascher-Rand
Bill Adams-Rand
Sam McEwan-Seaway
Jobsite-Seaway

PL

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y

File # 16

August 31, 1967

Carpenters Local Union # 31
1138 South Olden Avenue
Trenton, N.J.

Re: Training School for Boys
Skillman, New Jersey

Attn: Mr. Wm. Neylan

Gentlemen:

Confirming our telephone conversation today, we will guarantee payment of Pension and Welfare funds owed to you by the Seaway Floor & Paving Co.,Inc. for the Skillman Training School for Boys.

As discussed, we will need some additional time to contact Seaway and discuss this payment with them. This should be no more than a few weeks.

We appreciate your decision to allow your men to continue working while we straighten this matter out since it benefits both the men and the job.

You will be hearing from us or Seaway shortly.

Very truly yours,

RAND CONSTRUCTION COMPANY,INC.

Paul H. Lauer, P.E.
Project Manager

PHL/rms
cc: Bert Ascher-Rand
Bill Adams-Rand
Jim Sen Neswan-Seaway
Jobsite-Seaway

PL

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y

P 7/7

CL P

Bert

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVE. SOUTH • NEW YORK, N. Y. 10016 • MUrray Hill 3-0380

File # 16

PL
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
81

August 31, 1967

BM & PIU Local Union # 9
P.O. Box 5326
Trenton, N.J. 08638

Re: Training School for Boys
Skillman, N.J.

Attn: Mr. Tony Acquaviva

Gentlemen:

Confirming our telephone conversation today, we will guarantee payment of Pension and Welfare funds owed to you by the Seaway Floor & Paving Co., Inc. for the Skillman Training School for Boys.

As discussed, we will need some additional time to contact Seaway and discuss this payment with them. This should be no more than a few weeks.

We appreciate your decision to allow your men to continue working while we straighten this matter out since it benefits both the men and the job.

You will be hearing from us or Seaway shortly.

Very truly yours,

RAND CONSTRUCTION COMPANY, INC.

Paul H. Lauer
Project Manager

PHL/rms
cc: Bert Archer-Rand
Bill Adams-Rand
Tom McKwan-Seaway
Jobsite-Seaway

CH Q

120 WEST SEVENTH STREET
PLAINFIELD, NEW JERSEY

PLAINFIELD 7-3800

September 18, 1967

Seaway Floors & Paving Co.
11206 Union Avenue
Cleveland, Ohio

Dear Sir:

According to our records you have failed to make payment of contributions to Laborers Local 779 Welfare and Pension Funds on behalf of your employees for work performed during the payroll periods 8/2/67 to 8/30/67

Our records show the amount due Local Union 779 Welfare Fund to be $678.75 and the Pension Fund $678.75 for 2715 hours worked

Would you kindly give this matter your prompt attention

LAST NOTICE BEFORE LEGAL ACTION.

Very truly yours

LABORERS LOCAL 779 WELFARE & PENSION FUNDS

I. E. Shafter
Administrator

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

EX R

jy

No.

Return Receipt
Shows to whom and date delivered ☐ 10¢ fee
Shows to whom, date, and where delivered ☐ 15¢ fee
Deliver to Addressee Only ☐ 30¢ fee

PCO Form 3-00 Mar. 1968 NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL (See other side)

(Seaway Floor)

INSTRUCTIONS TO DELIVERING
☐ Show to whom and date delivered
☐ Show to whom, date, and address where delivered (Additional charges required for these services)

RECEIPT
Received the numbered article described below.
SIGNATURE OR NAME OF ADDRESSEE
SIGNATURE OF ADDRESSEE'S AGENT
REGISTERED NO.
CERTIFIED NO. 376187
INSURED NO.
DATE DELIVERED 8-21-67
SHOW WHERE DELIVERED (Only if requested)

August 18, 1967

Seaway Floor and Paving Co.,Inc.
11206 Union Avenue
Cleveland, Ohio

Re: Training School for Boys
Skillman, New Jersey

Gentlemen:

Please be advised that we require a complete itemized affidavit from you showing everybody to whom you owe money.

The last affidavit signed by I. Lichtenstein did not show all your suppliers to wit: D & W Blueprint, Anti-Hydro Waterproofing, and Symons Forms. It is our request and desire that from henceforth all affidavits be signed only by Mr. McEwen, any other signatories will not be honored.

If we do not have in our possession at the time you request a check, this affidavit we will not give you any monies until this is complied with.

We would like you to send us a signed and executed affidavit showing all monies that are owed up to July 31, 1967, everything included.

Very truly yours,
RAND CONSTRUCTION CO.,INC.

Bert A. Aecher, Controller

BAA/iw

Certified

PL
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y

101

10

Ex - U

August 11, 1967

Seaway Floor & Paving Co., Inc.
11206 Union Avenue
Cleveland, Ohio 44105

Re: Training School for Boys
Skillman, New Jersey

Gentlemen:

We are again quoting below our letter of July 23, and request immediate compliance.

" It is of extreme importance that you complete and forward to us immediately signed and executed the enclosed subcontractor's affidavit. We have been requesting this with each payment but so far have not had any compliance.

We also request waivers of lien or notarized letters from your main suppliers listed on the affidavit showing the condition of your account with them as of July 31, 1967.

As the same time we also request a copy of your Federal form 941 showing both sides including the tabulation for the depository receipts and a copy of the list of employees and amounts reported for the Skillman project.

We have requested many times the information enumerated in the first paragraph but have not had any compliance by you and must now insist upon this plus the tax form.

No further payments will be made to you until we receive these documents."

Very truly yours,

RAND CONSTRUCTION CO., INC.

Bert A. Ancher, Controller

BAA/iw
Enclosure

PL

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Ex V 11

11

01

July 28, 1967

Seaway Floor & Paving Co., Inc.
11206 Union Avenue
Cleveland, Ohio 44105

Re: Training School for Boys
Skillman, New Jersey

Gentlemen:

"It is of extreme importance that you complete and forward to us immediately signed and executed the enclosed subcontractor's affidavit. We have been requesting this with each payment but so far have not had any compliance.

We also request waivers of lien or notarized letters from your main suppliers listed on the affidavit showing the condition of your account with them as of July 31, 1967.

At the same time we also request a copy of your Federal form 941 showing both sides including the tabulation for the depository receipts and a copy of the list of employees and amounts reported for the Skillman project.

We have requested many times the information enumerated in the first paragraph but have had not had any compliance by you and must now insist upon this plus the tax form.

No further payments will be made to you until we receive these documents."

Very truly yours,

RAND CONSTRUCTION CO., INC.

Bert A. Ascher, Controller

BAA/iw
Enclosure

PL
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Ex - W

12

GEORGE H. BOHLINGER, JR.
COUNSELLOR AT LAW

28 WEST STATE STREET
TRENTON, NEW JERSEY
(609) 394-3167

October 26, 1967

Rand Construction Company, Inc.
404 Park Avenue, South
New York, New York

Gentlemen:

Please be advised that I am holding, subject to your order, Certificate of Deposit of Trenton Trust Company, dated April 7, 1967, No. CD 7937, in the name of Seaway Floor and Paving Co., Inc., in the face amount of $25,000.00. Upon receipt by me of the letter signed by Mr. McEwan and Mr. Ogletree addressed to Trenton Trust Company authorizing the proceeds of this Certificate to be paid by bank check to you, I will surrender the Certificate and the letter to Trenton Trust Company, receive its check to your order, and will forward the same to you.

Very truly yours,

George H. Bohlinger, jr.

GHB:vmf

PL
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

13

13

SEAWAY FLOOR AND PAVING CO., INC.
11206 Union Avenu3
Cleveland, Ohio

Trenton Trust Company
28 West State Street
Trenton, New Jersey

Gentlemen:

Seaway Floor and Paving Co., Inc., is the present owner of Certificate of Deposit of Trenton Trust Company, dated April 7, 1967, bearing Certificate of Deposit No. 7937, in the face amount of $25,000.00.

We wish the proceeds of this Certificate of Deposit to be paid by your check to Rand Construction Company, Inc., a corporation of New York.

The Certificate of Deposit will be presented to you, endorsed on behalf of Seaway Floor and Paving Co., Inc., by Virgil Ogletree, Vice-President. According to our account card with you, both Mr. Ogletree's signature and mine are required.

This letter, signed by me and countersigned by Mr. Ogletree, will be your authority to pay the proceeds of Certificate of Deposit No. 7937 to Rand Construction Company, Inc., by your check and my signature on this letter is to be accepted by you in lieu of my signature on the Certificate.

James McEwan, President
SEAWAY FLOOR AND PAVING CO., INC.

I herewith guarantee the above signature of John McEwan, President of Seaway Floor and Paving Co., Inc., and join in his authorization to the Trenton Trust Company to pay the entire proceeds of Certificate of Deposit No. 7937 by bank check to Rand Construction Company, Inc.

Virgil Ogletree
Virgil Ogletree, Vice-President
SEAWAY FLOOR AND PAVING CO., INC.

Dated: 10-28-67

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y

EX I

GEORGE H. BOHLINGER, JR.
COUNSELLOR AT LAW

28 WEST STATE STREET
TRENTON, NEW JERSEY
(609) 394-3157

October 31, 1967

SEAWAY FLOOR AND PAVING CO., INC.
c/o Rand Construction Company, Inc.
404 Park Avenue, South
New York, New York. 10016

I N V O I C E

Legal services in connection with arranging for redemption of Certificate of Deposit No. 7937 of Trenton Trust Company in the amount of $25,000, and arranging for transfer of proceeds directly to Rand Construction Company, Inc., in accordance with instructions from Seaway Floor and Paving Co., Inc., and from Rand Construction Company, Inc.....$ 150.00

Paid
Sy Hancock

cc: Seaway Floor & Paving Co., Inc.
Cleveland, Ohio.

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y

36

15

Ex J

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

161

GEORGE H. BOHLINGER, JR.
COUNSELLOR AT LAW

28 WEST STATE STREET
TRENTON, NEW JERSEY
(609) 394-3157

October 31, 1967

Mr. S. Tanenbaum
RAND CONSTRUCTION COMPANY, INC.
404 Park Avenue, South
New York, New York. 10016

In re Seaway Floor and Paving Co., Inc., Cleveland.

Dear Mr. Tanenbaum:

I am enclosing herewith Treasurer's check of the Trenton Trust Company, No. 14028, dated October 31, 1967, drawn to the order of Rand Construction Company, Inc., in the face amount of $25,000. The understanding which was had with Mr. Ogletree at the time of our arrangement last Thursday was that the entire proceeds of the Certificate of Deposit were to be paid to Rand. I assumed, and I believe that Mr. Asher and Mr. Lauer also assumed, that this would include interest from the date of deposit.

It so happens, however, that the interest for the first ninety-day period, in the amount of $312.50, was paid to Seaway on July 7th, and the interest for the second ninety-day period, in the amount of $312.50, was also paid to Seaway on October 7th. The terms of the deposit were that it was automatically renewed every ninety days. The last renewal, therefore, was on October 7th and the certificate being cashed at this date, would not carry any interest.

I am also enclosing my bill for services to Seaway, in care of you, in accordance with our understanding.

It was nice talking with you again and, as always, it was a pleasure to have been of service to you and Rand.

With kind regards.

Very truly yours,

George H. Bohlinger, Jr.

GHB:vmf
Enclosures (2)

P.S.: I also enclose herewith signed copy of authorization for the transaction above mentioned in the first paragraph of this letter.

37

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

EX K

October 31, 1967

Received from Trenton Trust Co., Trenton, N.J. Treasurers Check No. 14028 in the amount of $25,000.00 payable to Rand Construction Company, Inc. in full payment of Certificate of Deposit No. 7937 dated April 7, 1967 payable to the order of Seaway Floor and Paving Co. Inc. This certificate properly endorsed by Seaway Floor and Paving Co. Inc. payable to Rand Constructions Co. Inc. order.

Rand Construction Co. Inc.

12
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y
12

EX L

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY _____ DOLLARS

PAY TO THE ORDER OF _____ DATE _____ NET AMOUNT _____

RAND CONSTRUCTION COMPANY, INC.

ROYAL NATIONAL BANK OF NEW YORK

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000046430⑈

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 24814

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY Fifteen _____ DOLLARS

PAY TO THE ORDER OF _____ DATE _____ NET AMOUNT _____

RAND CONSTRUCTION COMPANY, INC.

ROYAL NATIONAL BANK OF NEW YORK

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000150000⑈

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 24813

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY _____ DOLLARS

PAY TO THE ORDER OF _____ DATE _____ NET AMOUNT _____

RAND CONSTRUCTION COMPANY, INC.

ROYAL NATIONAL BANK OF NEW YORK

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0002865385⑈

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 24515

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

AUG 30 '67

PAY _____ DOLLARS

PAY TO THE ORDER OF _____ DATE _____ NET AMOUNT _____

RAND CONSTRUCTION COMPANY, INC.

ROYAL NATIONAL BANK OF NEW YORK

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000206198⑈

39

Pl-1

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

19

FOR DEPOSIT ONLY
CARPENTERS & MILLWRIGHTS
LOCAL #31
WELFARE TRUST
430-395-2

1-120

FOR DEPOSIT ONLY
REDNOR & KLINE, P.C.

JAN 16 68

7165

1-120

A/C # 810285

DIS. 1-120 600.00

THE FIRST NATIONAL BANK
WARNER CO.

FOR DEPOSIT ONLY
PROVIDENT NATIONAL BANK
WARNER CO.

FOR DEPOSIT ONLY
REDNOR & KLINE, P.C.

1-120

100

40

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24669

1-797
260

ROYAL NATIONAL BANK OF NEW YORK
545 FIFTH AVENUE, NEW YORK CITY

PAY DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈2455⑈6830 ⑈000006875⑈

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24809

1-797
260

ROYAL NATIONAL BANK OF NEW YORK
545 FIFTH AVENUE, NEW YORK CITY

PAY DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

ROYAL NATIONAL BANK OF NEW YORK

⑆0260⑈0797⑆ 4⑈2455⑈6830 ⑈000000000⑈

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24808

1-797
260

ROYAL NATIONAL BANK OF NEW YORK
545 FIFTH AVENUE, NEW YORK CITY

PAY DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

ROYAL NATIONAL BANK OF NEW YORK

⑆0260⑈0797⑆ 4⑈2455⑈6830 ⑈000200000⑈

41

PAY ANY BANK OR BANKER

OCT 2 1957

PLAINFIELD TRUST
STATE NATIONAL BANK
PLAINFIELD, NEW JERSEY

1120

WARNER CO.

A/C 81032

G.A. 10,000.00

DIS.

NON

NON

1120

42

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-707
260

No. 24516

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY Twenty Two Hundred Fifty Two 62/100 DOLLARS

PAY TO THE ORDER OF
Kelly Tuttle Corporation
Seventy Seven Park Avenue

DATE 8/24/67

NET AMOUNT 2252.62

RAND CONSTRUCTION COMPANY, INC.

ROYAL NATIONAL BANK
OF NEW YORK 1-707

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000225262⑈

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-707
260

No. 24519

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAID
AUG 30 '67

PAY Fifty Two 90/100 DOLLARS

PAY TO THE ORDER OF
Kelly Tuttle Corporation
Seventy Seven Park Avenue

DATE 8/31/67

NET AMOUNT 52.90

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000005290⑈

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-707
260

No. 24520

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAID
AUG 31 '67

PAY Ten 00/100 DOLLARS

PAY TO THE ORDER OF
Kelly Tuttle Corporation
Seventy Seven Park Avenue

DATE 8/24/67

NET AMOUNT 10.00

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000001000⑈

FOR DEPOSIT ONLY
THE TATTERSALL CO.

SEP

AUG 31 ST

THE PHILADELPHIA
NATIONAL BANK
PHILADELPHIA, PENNA.

00065

FOR DEPOSIT ONLY
THE FIRST NATIONAL
BANKING & TRUST
COMPANY
WARNER CO
FOR DEPOSIT
PROVIDENT NAT'L
BANK

AUG

J # 6

G. A. 675290

G. H.

DIS.

FOR DEPOSIT ONLY
TO THE CREDIT OF
D & W BLUEPRINT CO.

AUG

NEW YORK

WESTERN UNION TELEGRAM

W. P. MARSHALL
CHAIRMAN OF THE BOARD

R. W. McFALL
PRESIDENT

NEW YORK

SYMBOLS
DL = Day Letter
NL = Night Letter
Int'l = International Telegram

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

NOV 3 1967

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

Rand Construction Co. RD0037 (48)DEA014 NL NOV 3 PM 10 48

DE CLA075 PD 3 EXTRA CLEVELAND OHIO 3 939A EST

RAND CONSTRUCTION CO

402 PARK AVE SOUTH NYK

ATTENTION MR HILTON

PLEASE MEET ENTIRE PAYROLL THIS WEEK AND WE WILL MAKE OUR OWN PASROLL NEXT WEEK

SEAWAY FLOOR AND PAVING CO INC JAMES MCEWEN AND VIRGIL OGLETREE

(47)

BF1201 (R2-65)

PL
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

20

Form No. USA-[illegible]
(Ed. 7-2-62)

In the United States District Court

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

FILED
APR 8 1968
Referees In Bankruptcy

IN THE MATTER OF:

SEAWAY FLOOR and PAVING CO., INC.

Bankrupt

S. E. Stein,

Trustee

ANSWER OF UNITED STATES OF AMERICA

TO PETITION TO SELL

PERSONAL PROPERTY

Bankruptcy No. B 68-1103

Now comes the United States of America and for answer to the Petition to Sell as filed by the Trustee in the above captioned matter, avers that the United States of America has a claim for taxes against the bankrupt in the amount of $ 81,994.44 by virtue of certain tax liens filed with the Recorder of Cuyahoga County, with interest and charges from date of demand in the amount of $ 203.44 , making a total of $ 82,197.88 due as of February 27, 1968 , ~~plus additional interest at 6% per annum on $ _____ from _____ 19_____~~ as set out on copy of lien attachment marked Exhibit A which is attached hereto and made a part of this Answer; and that notices of tax liens were filed with the Recorder of Cuyahoga County as follows:

Tax Lien No. 3401 EA 12786, filed February 23, 1968

Tax Lien No. 3401 EA 12751, filed February 16, 1968

copies of which notices are attached hereto marked Exhibits B & C and made a part of this Answer; and that by reason thereof, said taxes became a lien and are entitled to priority of payment.

WHEREFORE, the United States of America prays that the interests of the United States be protected as far as determination of the priority of the liens is concerned, that the property be sold, and that the claim of the United States be paid from moneys received from the sale of the property.

MERLE M. McCURDY
United States Attorney

By: _____
Dominic J. Cimino
Asst. U. S. Attorney

Copy attached for S. E. Stein, Trustee, 4614 Prospect Avenue, Cleveland, Ohio, this 8th day of April 1968.

_____
Dominic J. Cimino
Asst. U. S. Attorney

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

46

LIEN ATTACHMENT

TAXPAYER'S NAME AND ADDRESS

Seaway Floor & Paving Co., Inc.
11206 Union Ave.,
Cleveland, Ohio

#1068-1103
Petition Date 2/27/68

TYPE OF TAX AND PERIOD	DATE LIEN ATTACHED UNDER SEC. 6321 26 U. S. C.	DATE NOTICE OF LIEN FILED WITH Cuyahoga COUNTY REC.	ASSESSED BALANCE	INTEREST FROM DEMAND DATE TO: 2-27-68	TOTAL ASSESSED BALANCE PLUS INTEREST TO: 2-27-68
941-9/30/67	12/22/67	2/16/68	$41,941.52	6.24	$41,947.76
941-12/31/67	2/23/68	2/23/68	40,052.92	197.20	40,250.12
			$81,994.44	203.44	82,197.88

TOTAL $82,197.88

Exhibit A

U S TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

omr

DHR.CLE 5-657 (6 64)

Dattilo

U. S. TREASURY DEPARTMENT — INTERNAL REVENUE SERVICE

(REV. 4-63)

NOTICE OF FEDERAL TAX LIEN UNDER INTERNAL REVENUE LAWS

For Optional Use by Recording Office

DISTRICT: Cleveland

SERIAL NUMBER: 3401 EA 12786

Pursuant to the provisions of Sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer.

NAME OF TAXPAYER

Seaway Floor & Paving Co., Inc.

RESIDENCE OR PLACE OF BUSINESS

11206 Union Ave., Cleveland, Ohio 44105

CLASS OF TAX (Tax Return Form No.) (a)	PERIOD ENDED (b)	ASSESSMENT DATE (c)	IDENTIFYING NUMBER (d)	UNPAID BALANCE OF ASSESSMENT (e)
941	12-31-67	2-23-68	34-0927156	50,052.92
PLACE OF FILING	Recorder: Cuyahoga County Cleveland, Ohio		TOTAL	$ 50,052.92

WITNESS my hand at Cleveland, Ohio, on this, the 23rd day of February, 19 68

DISTRICT DIRECTOR OF INTERNAL REVENUE	BY (Signature)	TITLE
F. S. TURBETT, JR.	V. T. DATTILO	Revenue Officer

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien G.C.M. 26419, C.B. 1950-51, 125.)

PART 2—To be receipted and returned to the Internal Revenue Service

-Exh B

48

Dattilo

For Optional Use of Recording Office

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

NOTICE OF FEDERAL TAX LIEN UNDER INTERNAL REVENUE LAWS

DISTRICT: Cleveland

SERIAL NUMBER: 3401 EM 12751

Pursuant to the provisions of Sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer.

NAME OF TAXPAYER

Sammy Floor & Paving Co. Inc.

RESIDENCE OR PLACE OF BUSINESS

11206 Union Avenue
Cleveland, Ohio 44105

CLASS OF TAX (Tax Return Form No.) (a)	PERIOD ENDED (b)	ASSESSMENT DATE (c)	IDENTIFYING NUMBER (d)	UNPAID BALANCE OF ASSESSMENT (e)
941	9/30/67	12/22/67	34-0927156	41,941.52
			TOTAL	$41,941.52

PLACE OF FILING

Recorder: Cuyahoga County
Cleveland, Ohio

WITNESS my hand at Cleveland, Ohio, on this, the 16th day of February, 1968

DISTRICT DIRECTOR OF INTERNAL REVENUE	BY (Signature)	TITLE
F. S. TUDENCO, JR.	W. [illegible] Dattilo	Revenue Officer

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien, G.C.M. 26419, C.B. 1950-51, 125.)

PART 2—To be recorded and returned to the Internal Revenue Service

Exh. C

I AM THE PRESIDENT OF RAND CONSTRUCTION COMPANY, INC., AND I SUBMIT THIS STATEMENT BASED UPON MY PERSONAL KNOWLEDGE OF THE FACTS CONTAINED HEREIN AS WELL AS THE BOOKS AND RECORDS OF THE CORPORATION.

IN CONNECTION WITH PAYMENTS MADE DIRECTLY TO SEAWAY FLOOR AND PAVING COMPANY, INC., OR ON ITS BEHALF, NO PAYMENTS WERE MADE IN CASH.

WITH RESPECT TO THE PROCEEDS OF THE CERTIFICATE OF DEPOSIT IN THE SUM OF $25,000.00 RECEIVED BY RAND, SAME WAS RECEIVED UNDER THE FOLLOWING CIRCUMSTANCES. PRIOR TO THE EXECUTION OF THE CONTRACT BETWEEN SEAWAY AND RAND, AND AS A CONDITION OF THE CONTRACT, RAND REQUIRED THAT SEAWAY FURNISH A SURETY COMPANY PAYMENT AND PERFORMANCE BOND. SEAWAY WAS UNABLE TO FURNISH SAID BOND, BUT OFFERED TO DEPOSIT, IN ESCROW, THE SUM OF $25,000 IN LIEU OF SAID BOND AS ITS PERSONAL BOND AND GUARANTEE FOR THE FAITHFUL PERFORMANCE OF SAID CONTRACT AND FOR THE PAYMENT OF JUST CLAIMS OF ANYONE SUPPLYING LABOR OR MATERIAL TO SEAWAY. SAID SUM OF $25,000 WAS TO BE DEPOSITED AS A TIME DEPOSIT UNDER A CERTIFICATE OF DEPOSIT. A COPY OF THE AGREEMENT DATED APRIL 7, 1967 RELATING TO SAID ESCROW IS ATTACHED HEREWITH.

A NUMBER OF NOTICES OF CLAIM WERE PRESENTED TO RAND BY SEAWAY'S SUPPLIERS. UNDER THE AGREEMENT WITH SEAWAY, THE SUM OF $25,000 UNDER THE CERTIFICATE OF DEPOSIT GUARANTEE WAS SURRENDERED TO RAND ON NOVEMBER 3, 1967 AND CREDIT GIVEN TO SEAWAY AGAINST ITS CONTRACT. WITHIN THE NEXT 4 WEEKS, CLAIMS OF SEAWAY'S SUPPLIERS AMOUNTING TO OVER $40,000 WERE PAID.

SUBSEQUENTLY SEAWAY DEFAULTED IN THE PERFORMANCE OF SAID CONTRACT BY ABANDONING THE WORK. THE LAST DATE THAT ANY WORK WAS PERFORMED BY THAT FIRM WAS JANUARY 2, 1968. THE WORK WAS COMPLETED BY RAND'S OWN FORCES AND BY OTHERS. THIS RESULTED IN DAMAGES TO RAND IN THE SUM OF $28,460.88, REPRESENTING THE DIFFERENCE BETWEEN THE CONTRACT PRICE WITH SEAWAY AND THE TOTAL AMOUNT EXPENDED TO COMPLETE SAID WORK AFTER TAKING INTO CONSIDERATION PAYMENTS ALREADY MADE AND THE SUM REMAINING IN SAID CONTRACT WITH SEAWAY.

IF THERE IS ANY FURTHER INFORMATION YOU MAY REQUIRE WE SHALL BE PLEASED TO FURNISH SAME.

S. TANENBAUM, PRESIDENT

WITNESS

Ex. S.

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

23

Area Code 216

Office: 921-2468
Yard: 921-2432

Commercial - Industrial

Seaway Floor & Paving Co.

11206 Union Avenue
Cleveland, Ohio 44105

Concrete Construction

November 29, 1966

$ 93/sq

Rand Construction Co., Inc.
404 Park Avenue
New York, N. Y.

DEC 5 1966

Rand Construction Company, Inc.

Attn: Estimating Dept.

Pl. Exh A for Id. Bat

Gentlemen:

Enclosed you will find a list of recently completed jobs by our company. We specialize in heavy duty concrete floors or any concrete flat work, 80,000 sq. ft. plus.

JOB REFERENCE

Green & White Construction Co. 10534 W. McNichols Street Detroit, Michigan (Mr. Henry Henley) 862-2242	Warehouse & Office Bldg. Louisville, Ky.(120,000 sq,ft.) Warehouse Complex Taylor, Mich. (240,000 sq. ft.)
Keller-Silver Corporation 1724 Superior Bldg. Cleveland, Ohio (Mr. Dick Keller) 579-0770	Several Schools Bank Bldg. High Rise Apt. Bldg. Shopping Center
Walter L. Couse & Co. 12740 Lyndon Avenue Detroit, Michigan (Mr. Carl Wild) 273-2500	International Paper Co. Manufacturing Bldg. 175,000 sq. ft. of emri-topcret Howell, Michigan Mr. William Savage (inspector)
Ray Fogg Bldg. Method 4913 Van Epps Road Cleveland, Ohio (Mr. Bob Mathott)	Garifeld Heights City Park Job Garfield Hts., Ohio

Pl. Exh. A
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

51

RETAINING WALLS · D[illegible] AREAS · CONCRETE FLOORS

Office: 921-2468
Yard: 921-2432

Commercial - Industrial

Seaway Floor & Paving Co.

11206 Union Avenue
Cleveland, Ohio 44105

Concrete Construction

F. K. Wick Inc.
12827 Fountain Ct.
Strongsville, Ohio
238-6214

Warehouses
Several Other Jobs
Strongsville, Ohio

Arrow Construction Co.
Silver Drive
Columbus, Ohio
(Mr. Jones)

Manufacturing Bldg.
200,000 sq. ft.
Berea, Ohio

BANK REFERENCE

First National Bank of Howell
Howell, Michigan
(Assistant Manager)

Continental Bank
East 9th & Superior
Cleveland, Ohio
(Mr. Taylor)

Argo State Bank
Summit, Illinois
(Mr. Grant)

We would greatly appreciate the opportunity to bid on any concrete flat work in our line.

Respectfully yours,

SEAWAY FLOOR & PAVING CO., INC.

James McEwen, President

JM/emh

Union
Placing

RETAINING WALLS · DOCKS · FOUNDATIONS · PARKING AREAS · CONCRETE FLOORS

RECEIVED
MAR 23 1967
Rand Construction Company, Inc.

INTERNATIONAL PAPER COMPANY

HOWELL, MICHIGAN 48843, PHONE 517 546-1220, 313 963-0878

CONTAINER DIVISION

March 16, 1967

Seaway Floor and Paving Company
11206 Union Avenue
Cleveland, Ohio

Re: Concrete floor work.
Howell, Michigan plant

Gentlemen:

The purpose of this letter is to bring to your attention the feelings of International Paper Company relative to your performance in placing the concrete floors at our Howell, Michigan plant.

To date we have received a great many favorable comments from visiting professional architects and engineers. The 172,000 square sq. ft. area, of which most was an "Emerey" aggregate surface, has stood up exceedingly well under very abusive machine erection traffic and is now experiencing our regular production load.

I wish to add that you are not on the punch list only because of the efforts of your Mr. Frank Feltrin who worked under very unfavorable weather conditions and often unfavorable labor conditions to produce an excellent floor. Please pass my regards on to Mr. Feltrin for a job well done.

Very truly yours,

INTERNATIONAL PAPER COMPANY

William A. Savage
Resident Engineer

Pltf
EXHIBIT
U. S. DIST. COURT
E. D. OF N. Y.

Dft

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY Twenty Thousand Forty Seven 30/100 DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

Seaway Floor & Paving Co. Inc. | 10/26/ | 20047

RAND CONSTRUCTION COMPANY, INC.

1100 Union Avenue
Cleveland, Ohio

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000174120⑈

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE
	On a/c		

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 24697

PAY Four thousand [illegible] 00/100 DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

Seaway Floor & Paving Co. | 10/ | 4,700 00

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000470000⑈

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE
	Eng. & Inspection		
	Cleaning School		
	[illegible]		

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 24819

PAY [illegible] 50/100 DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

Seaway [illegible] | 10/26/ | [illegible]

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈2450⑈680⑈ ⑈0000250000⑈

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE
	On a/c [illegible]		
	[illegible]		

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 24785

PAY Twelve Hundred Seventy Four 13/100 DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

Seaway Floor & Paving Co. Inc. | 10/4/ | 1274 13

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000122413⑈

EXHIBIT
S. DIST. COURT
S. D. OF N. Y.

PAY TO THE ORDER OF | DATE | NET AMOUNT
DOLLARS
RAND CONSTRUCTION COMPANY, INC.
ROYAL NATIONAL BANK OF NEW YORK
⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈00006300⑈

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016
1-797
260
No. 24608
ROYAL NATIONAL BANK OF NEW YORK
249 FIFTH AVENUE, NEW YORK CITY
PAY DOLLARS
PAY TO THE ORDER OF | DATE | NET AMOUNT
RAND CONSTRUCTION COMPANY, INC.
⑆0260⑈0797⑆ 4⑈2450⑈6030 ⑈00006000⑈

⑆0260⑈0797⑆ 4⑈2455⑈6030 ⑈00006000⑈

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016
No. 24608
ROYAL NATIONAL BANK OF NEW YORK
249 FIFTH AVENUE, NEW YORK CITY
PAY DOLLARS
PAY TO THE ORDER OF | DATE | NET AMOUNT
RAND CONSTRUCTION COMPANY, INC.

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016
1-797
260
No. 24778
ROYAL NATIONAL BANK OF NEW YORK
249 FIFTH AVENUE, NEW YORK CITY
PAY DOLLARS
PAY TO THE ORDER OF | DATE | NET AMOUNT
RAND CONSTRUCTION COMPANY, INC.
⑆0260⑈0797⑆ 4⑈2450⑈6030 ⑈00005376⑈

56

FRB NEW YORK
1-120
1-120
100

DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ ⑈21⑆5⑈6⑆ "0000590000"

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24406

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ ⑈25⑆5⑈6⑆ "0000548400"

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24488

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ ⑈25⑆5⑈8⑆ "0000220000"

ROYAL NATIONAL BANK OF NEW YORK BOOKKEEPING DEPT.

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 24445

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY DOLLARS

PAY TO THE ORDER OF | DATE | NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ ⑈21⑆5⑈6⑆ "0000290000"

NEW YORK
1-120
JUL
AUG
AUG
AUG
AUG
1-120

PAY Eleven thousand three hundred sixty four 00/100 DOLLARS

PAY TO THE ORDER OF | DATE 6/23/67 | NET AMOUNT 11364.00

RAND CONSTRUCTION COMPANY, INC.

JUN 30 67

ROYAL NATIONAL BANK

⑆260⑈0797⑆ 4⑈2455⑈683⑈ "0001132364"

1-797 / 260

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24265

DATE | AMOUNT | DISCT. | BALANCE

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY Seven thousand dollars 00/100 DOLLARS

PAY TO THE ORDER OF | DATE 7/6/67 | NET AMOUNT 7000.00

RAND CONSTRUCTION COMPANY, INC.

11306 Lexington Avenue
Cleveland, Ohio 44105

"0000700000"

⑆0260⑈0797⑆ 4⑈2455⑈683⑈

1-797 / 260

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24323

DATE | AMOUNT | DISCT. | BALANCE

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY Three thousand eight hundred 00/100 DOLLARS

PAY TO THE ORDER OF | DATE 7/6/67 | NET AMOUNT 3800.00

RAND CONSTRUCTION COMPANY, INC.

11306 Lexington Avenue
Cleveland, Ohio 44105

"0000380000"

⑆0260⑈0797⑆ 4⑈2455⑈683⑈

1-797 / 260

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24363

DATE | AMOUNT | DISCT. | BALANCE

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY Fifty two dollars 00/100 DOLLARS

PAY TO THE ORDER OF | DATE 7/13/67 | NET AMOUNT 52.00

RAND CONSTRUCTION COMPANY, INC.

11306 Lexington Avenue
Cleveland, Ohio 44105

"0000520000"

⑆0260⑈0797⑆ 4⑈2455⑈683⑈

G. H. 79.20
DIS.
CREDITED TO ACCOUNT
OF THE WITHIN NAMED PAYEE
PRINCETON
CERTIFIED
1-120

1-707
260

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 25209

BY INDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISC'T.	BALANCE

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY _____ DOLLARS

NET AMOUNT 1660

PAY TO THE ORDER OF _____ DATE _____

RAND CONSTRUCTION COMPANY, INC.

⑈000916000⑈ ⑆2455⑆63⑈ ⑆0260⑆0791⑆

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24111

BY INDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISC'T.	NET AMOUNT

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY _____ DOLLARS

PAY TO THE ORDER OF _____ DATE _____ NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑈000100000⑈ ⑆0260⑆0791⑆ ⑆2455⑆63⑈

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24153

BY INDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISC'T.	NET AMOUNT

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY _____ DOLLARS

PAY TO THE ORDER OF _____ DATE _____ NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑈000196000⑈ ⑆0260⑆0791⑆ ⑆2455⑆63⑈

PAY TO THE ORDER OF
THE CO
SEAWAY FLOOR & AVENUE CO., LTD.
#33-504-1

PAY ANY BANK
P.E.D.
395-256

CENTRAL NATIONAL BANK
OF CLEVELAND
CLEVELAND OHIO

PAY TO THE ORDER OF
THE BOARD
SEAWAY FLOOR & AVENUE CO. LTD.
MAY 18 1961
PAY ANY BANK
P.E.D.

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

RAND CONSTRUCTION COMPANY, INC.
[illegible] PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 25209

PAY [illegible] DOLLARS

NET AMOUNT 1640 --

PAY TO THE ORDER OF

DATE

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ ⑈245⑈603⑈ ⑈0000164000⑈

EXHIBIT
U.S. DIST. COURT
S.D. OF N.Y.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 E.O.M. DISCOUNT DATE

NAME Seaway Floor + Paving Co Inc

ADDRESS 11206 Lexington Avenue

CITY Cleveland Ohio 44105

SHEET NO. Page 1

PHONE Shellmore

DISCOUNT TERMS:

ACCT'S PAY CREDIT	PURCHASED FROM OR PAID TO	DATE	ACCT'S PAY DEBIT	DISC.	AMOUNT OF CHECK	INVOICE OR CHECK NO	BALANCE	OLD BALANCE
900 -	Seaway Floor + Paving Co	4/30/67				1233/1	900 -	
	Seaway Floor + Paving Co Inc	5/6/67	10000 -		10000 -	24111	1000 -	
	Seaway Floor + Paving Co Inc.	5/26/67	19600 -		19600 -	24153	20600	
26460 - 5560	Seaway Floor + Paving Co Inc	5/31/67				P23564	5560 -	20600
	Seaway Floor + Paving + Warner Co	6/22/67	11323 64		11323 64	24264	5463 64	5560 -
	Seaway Floor + Paving Co Inc	6/23/67	7000 -		7000 -	24265	12463 64	5463 64
8640 -	Seaway Floor + Paving Co Inc	6/30/67				P23721	3523 64	12463 64
	Seaway Floor + Paving Co Inc	7/6/67	3800 -		3800 -	24324	7323 64	3523 64
	Seaway Floor + Paving Co	7/13/67	5000 -		5000 -	24363	12323 64	7323 64
	Seaway Floor + Paving	7/20/67	5900 -		5900 -	24358	18223 64	12323 64
	Seaway Floor + Paving	7/26/67	5484 -		5484 -	24406	24207 64	
	Seaway Floor + Rosas + Klein	7/26/67	3421 31		3421 31	24410	27628	
5250 -	Seaway Floor + Paving	7/31/67				P24131	31221 05	27628
	Seaway Floor + Paving	8/3/67	9600 -		9600 -	24445	25621 05	31221 05
	Seaway Floor + Paving Co.	8/17/67	7100 -		7100 -	24455	21521 05	
900 - 103950	Seaway Floor + Paving Co	8/31/67				P24218	22321 05	21521 05
	Seaway Floor + Paving + Rosas + Klein	8/24/67	2061 98 8349 07		2061 98	24515	20259 07	22321 05
	Seaway Floor + Paving + Valerio Co	8/24/67	2252 62		2252 62	24516	18006 45	20259 07
	Seaway Floor + Paving + Grayson Lumber Co	8/24/67	2749 80 8493 75		2749 80	24517	15256 65	18006 45
	Seaway Floor + Paving + Warner Co	8/24/67	6952 90		6952 90	24519	8303 75	15256 65
	Seaway Floor + Paving + Dow Chemical	8/24/67	49 00 75 49		49 00	24520	8254 75	8303 75
	Seaway Floor + Paving	8/31/67	63 00 101 38 55		63 00 -	24544	1954 75	8254 75
	Seaway Floor + Paving	9/15/67	6000 - 7994		6000 -	24608	1954 75	1954 75
	Seaway Floor + Paving Co	9/30/67	6700 -		6700 -	24668	8745 25	
	Same Floor + Paving + Labor Roll on floor + Carp.	9/30/67	678 75		678 75	24669	9424 00	
	Seaway Floor + Paving Labor Roll 777	9/30/67	678 75		678 75	24670	10103 75	
26250 - 180000	Seaway Floor + Paving	9/30/67	113552 75			P24619	16147 25	10103 75
139,171 -	Seaway Floor + Paving	10/31/67				P24857	25,147 25	16147 25

ACCOUNTS PAYABLE LEDGER

Deft Exh E

1 2 3 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 E.O.M. DISCOUNT DATE

NAME Seaway Floor Covering Co Inc

SHEET NO. Shellac Pg 2

ADDRESS 11206 Lenox Avenue

PHONE

CITY Cleveland Ohio 44105

DISCOUNT TERMS:

ACCT'S PAY CREDIT	PURCHASED FROM OR PAID TO	DATE	ACCT'S PAY DEBIT	DISC	AMOUNT OF CHECK		BALANCE
13700 —	Bacomo Bar Fed	10/31/67					25147 25
17500 —	Seaway Floor Covering Co	10/31/67				P249/10	42647 25
	Seaway Floor Covering Co	10/31/67	2500 —		2500 —	24819	40147 25
	Seaway Floor Covering Co	12/19/67	5376 77		5376 77	24778	34770 48
	Seaway Floor Covering Co	12/19/67	1224 13		1224 13	24785	33546 35
	Seaway Floor Covering Co	10/10/67	1741 20		1741 20	24731	31805 15
	Seaway Floor Covering Co Inc	10/6/67	4700 —		4700 —	24697	27105 15
			12939 85				
	Seaway Floor Covering	11/3/67	5600 —		5600 —	24850	21505 15
	Seaway Floor Covering Trey Kaelbaler	11/6/67	2000 —		2000 —	24808	19505 15
	Seaway Floor Covering Warner Co	11/6/67	10000 —		10000 —	24807	9505 15
	Seaway Floor Covering Rodman & Klein	11/6/67	2000 —		2000 —	24810	7505 15
	Seaway Floor Covering R Balenger	11/6/67	150 —		150 —	24811	7355 15
	Seaway Floor Covering	11/16/67	2187 —		2187 —	24936	5166 15
	Seaway Floor Covering	11/20/67	2402 61		2402 61	24812	2763 54
	Seaway Floor Covering	11/24/67	700 —		700 —	24951	2063 54
	Seaway Floor Covering	11/30/67	900 —		900 —	24973	1163 54
	Seaway Floor Covering Warner Co	11/30/67	27263 55		28653 15	24613	3090 31
	Yellow Check Tower Co Inc		1394 31				
	Interest on Overdraft	11/30	25 00			CR 188	3090 31
			29590 31				
	Seaway Floor	12/7/67	825 —		825 —	25028	3915 31
	Seaway Floor	12/13/67	750 —		750 —	25068	4665 31
			1615 31				
	Seaway Floor	12/21/67	220 —		220 —	25106	4885 31
	Seaway Floor	12/28/67	350 —		350 —	25146	5235 31
			1173 31				
	Seaway Floor	1/3/68	130 —		130 —	25200	5365 31
	Seaway Floor Federal Plaza	1/3/68	1500 —		1500 —	24814	6865 31
	Seaway Floor	1/11/68	1640 —		1640 —	25202	8505 31
	Seaway Floor Carpet Co Inc Billings Hall Cleveland Fund	1/30/68	464 20		464 20	24815	8969 41
	Seaway Floor Carpet Co Inc Billings Hall Cleveland Fund	1/30/68	464 20		464 20	24816	9433 31

STANDARD FORM 800 82 CESCO DIV STERLING PRINTING CORP

ACCOUNTS PAYABLE LEDGER

NAME Seaway Floor & Paving Co., Inc. SHEET NO. Mills

ADDRESS 11206 Union Avenue PHONE 623

CITY Cleveland, Ohio 44105 DISCOUNT TERMS:

ACCT'S PAY CREDIT	PURCHASED FROM OR PAID TO	DATE	ACCT'S PAY DEBIT	DISC.	AMOUNT OF CHECK	INVOICE OR CHECK NO	BALANCE	OLD BALANCE
	Balance Forwarded		[illegible]				4433 91	
	Circo Perez for Seaway	2/9/68	861 41		✓ 861 41	25355	10295 32	
	Seaway Floor & Warner	2/29/68	4043 33	63 30	✓ 3980 03	24817	14338 65	
4198 60	Seaway Floor	12/31/67	10638 65			P264a/9	10140 05	
5235 31	Seaway Floor	12/31/67				P266a/9	4904 74	
16233 91								
	Freeport Stone	3/1/68	2968 85		✓	24818	10873 32	
	Rod & Kirk	3/19/68	176807 30		✓	25581	15123 32	
	Lawson & Camp	4/5/68	4250 —		✓	25583	20123 32	
	Seaway — Tuttle Hill	4/23/68	6000 —		✓	25704	23123 32	
23123 39	Seaway Floor & Paving	5/31/68	2000 — 159657 30			P274/24	— 0 —	
5000 —	Seaway Floor & Paving	9/30/68				P286/24	5000 —	
	Anti-Hydro waterproofing Co.	11/17/69	1850 —	—	1850 —	3623	3150 —	
3150 —	Seaway - Floor & Paving	12/31/65	140907 30			RH-11	— 0 —	
140907 30								

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 E.O.M. DISCOUNT DATE

NAME Port-O-San. (Sea wayfloor) SHEET NO. Skillman P-1.

ADDRESS PHONE

CITY DISCOUNT TERMS:

ACCT'S PAY CREDIT	PURCHASED FROM OR PAID TO	DATE	ACCT'S PAY DEBIT	DISC.	AMOUNT OF CHECK	INVOICE OR CHECK NO	BALANCE	OLD BALANCE
430 06	Port-O-San.	4/30/69				P8/20	430 06	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 E.O.M. DISCOUNT DATE

NAME Stellwell Supply. (Seaway Food) SHEET NO. S/Gilmary P1.

ADDRESS PHONE

CITY DISCOUNT TERMS:

ACCT'S PAY CREDIT	PURCHASED FROM OR PAID TO	DATE	ACCT'S PAY DEBIT	DISC.	AMOUNT OF CHECK	INVOICE OR CHECK NO	BALANCE	OLD BALANCE
							71 87	
71 87	Stellwell Supply Co.	4/30/69					=0=	
(71 87)	Stellwell Supply Co	12/31/69				P-47/10	=0=	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 E.O.M. DISCOUNT

NAME TOMPKINS. (Strong Floor) SHEET NO. Skil

ADDRESS PHONE 8.1

CITY DISCOUNT TERMS:

ACCT'S PAY CREDIT	PURCHASED FROM OR PAID TO	DATE	ACCT'S PAY DEBIT	DISC.	AMOUNT OF CHECK	INVOICE OR CHECK NO	BALANCE
1855 16	Tompkin's	4/30/69				58/22	1855 16
		8/20/70	700			7164	1.55 16

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE
Payment Account			

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797 / 260

No. 25200

PAY One thousand & thirty and 00/100 DOLLARS

PAY TO THE ORDER OF	DATE	NET AMOUNT
Seaway Elev. & Paving Corp	Jan 3 1968	1130

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈2455⑈683⑈ ⑈0000013000⑈

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE
Pl. Wellington			

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797 / 260

No. 25146

PAY Ten thousand DOLLARS

PAY TO THE ORDER OF	DATE	NET AMOUNT
Seaway	12/30/67	5000

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈079 4⑈245⑈68 ⑈00000015000⑈

00000015000

ROYAL NATIONAL BANK OF NEW YORK
DEC 29 1967
CHECKS PAYABLE ONLY AS ORDERED AND BENEFICIARY PERSONALLY ENDORSED
CERTIFIED
10 C5368

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE
Pl. Stuyvesant			

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797 / 260

No. 25106

PAY Two thousand and 00/100 DOLLARS

PAY TO THE ORDER OF	DATE	NET AMOUNT
Seaway	12/29/67	2000

RAND CONSTRUCTION COMPANY, INC.

⑆260⑈0797⑆ 4⑈2455⑈683⑈ ⑈00000022000⑈

ROYAL NATIONAL BANK OF NEW YORK
DEC 21 1967
CHECKS PAYABLE ONLY AS ORDERED AND BENEFICIARY PERSONALLY ENDORSED
CERTIFIED
10 C5343

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

RAND CONSTRUCTION COMPANY, INC.
PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-707 / 260

No. 25068

DOLLARS

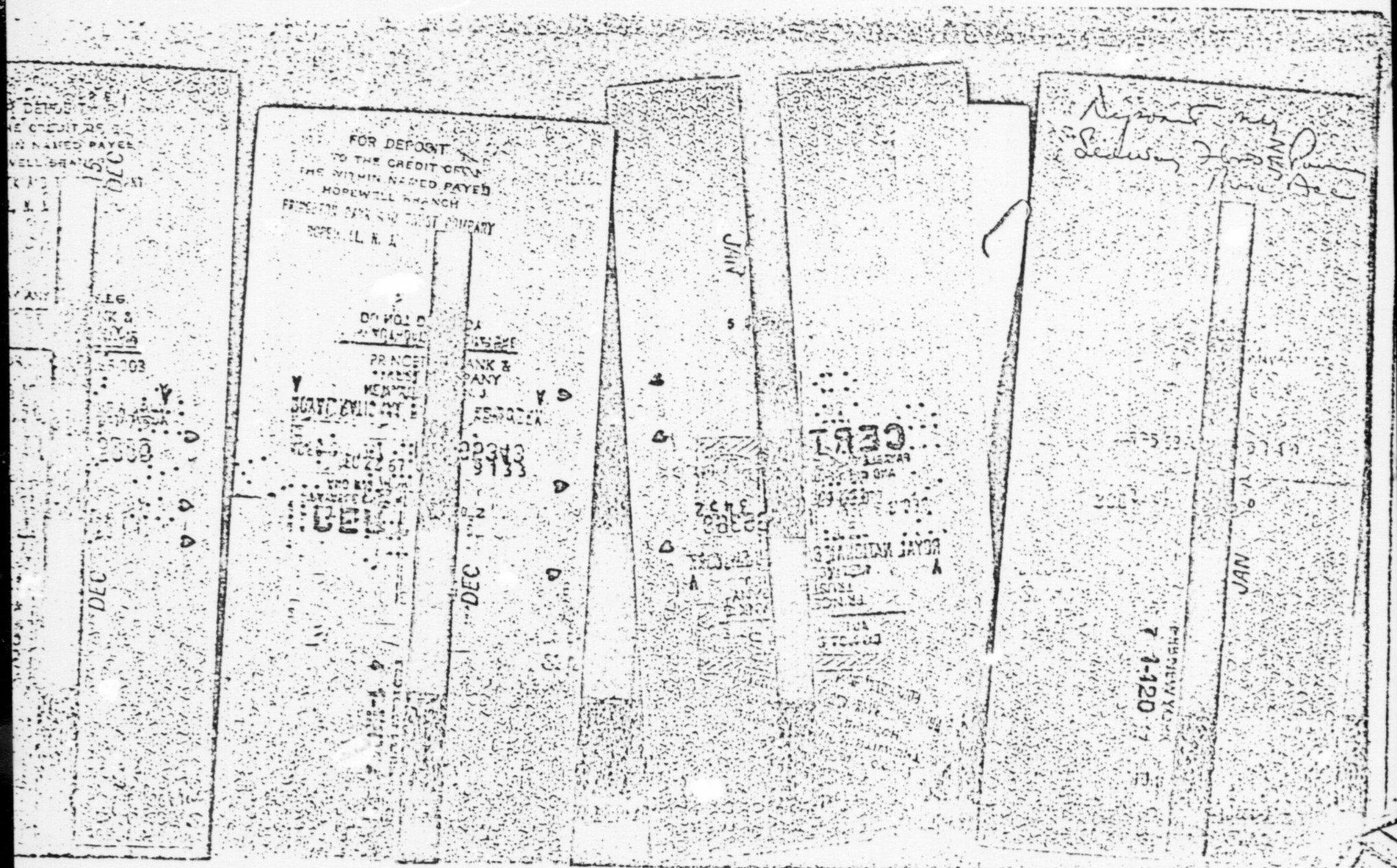
PAY TO THE ORDER OF

NET AMOUNT

DATE

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Fig


FOR DEPOSIT
TO THE CREDIT OF
THE WITHIN NAMED PAYEE
HOPEWELL BRANCH
PRINCETON BANK & TRUST COMPANY
DEC
JAN
CERT
PHOENIX NEW YORK

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 25023

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY

DOLLARS

DATE

NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈2655⑈6000 ⑈000002500⑈

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24973

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY

DOLLARS

DATE

NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈0450⑈6800 ⑈000000000⑈

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24951

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY

DOLLARS

DATE

NET AMOUNT

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈2450⑈6800 ⑈000007000⑈

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

No. 24812

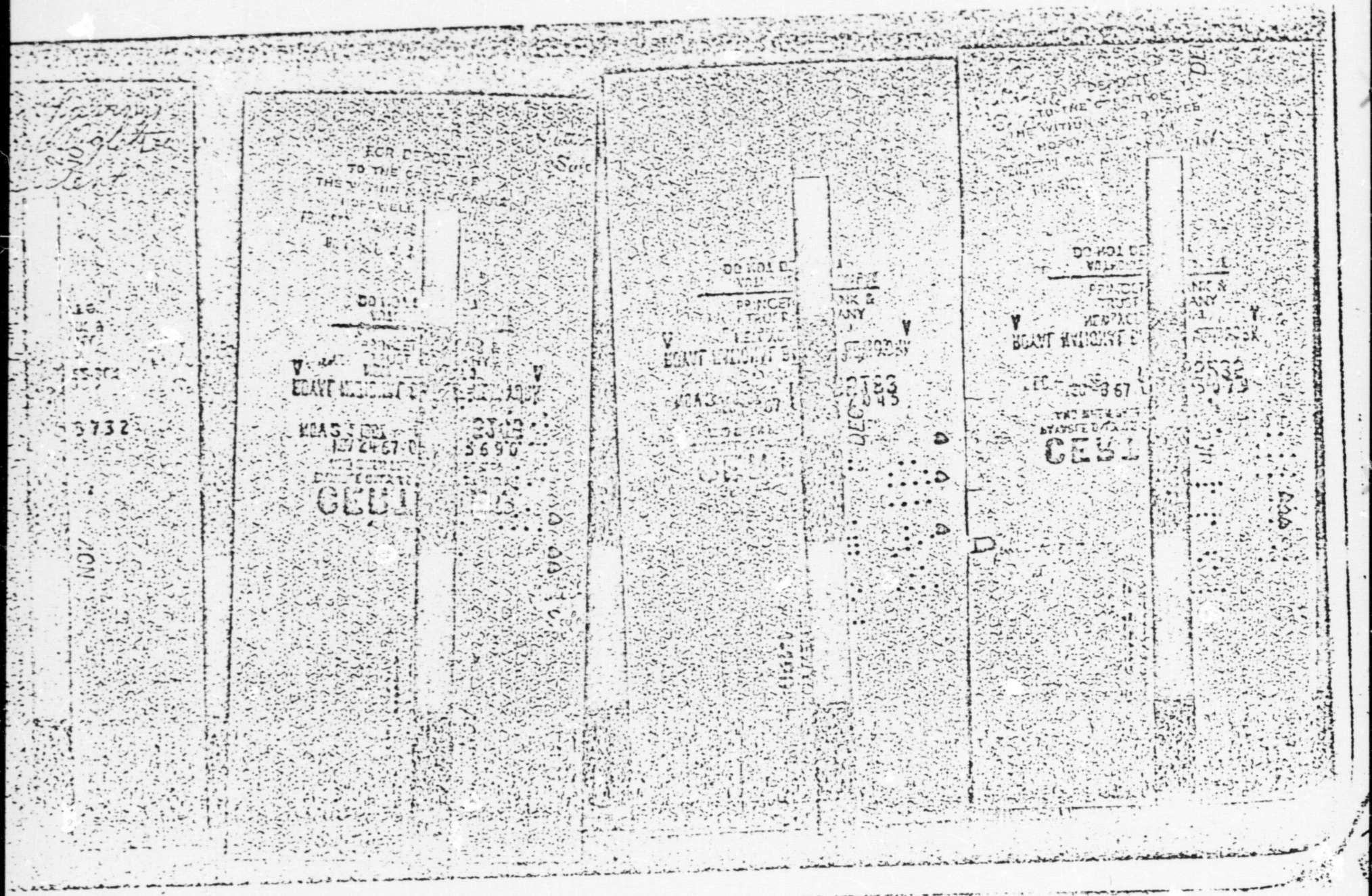
ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY

DOLLARS

DATE

NET AMOUNT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PRINCETON
TRUST
BOUNT MOUNT
CESL

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 24856

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY [illegible] DOLLARS

PAYEE	DATE		NET AMOUNT
[illegible]	11/3/67		[illegible]

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈0450⑈680⑈ ⑈0000560000⑈

BY ENDORSEMENT THIS CHECK IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT	DISCT.	BALANCE

RAND CONSTRUCTION COMPANY, INC.
404 PARK AVENUE SOUTH
NEW YORK, N. Y. 10016

1-797
260

No. 24936

ROYAL NATIONAL BANK OF NEW YORK
245 FIFTH AVENUE, NEW YORK CITY

PAY [illegible] DOLLARS

PAYEE	DATE		NET AMOUNT
[illegible]	[illegible]		[illegible]

RAND CONSTRUCTION COMPANY, INC.

⑆0260⑈0797⑆ 4⑈0450⑈680⑈ ⑈0000218900⑈

FOR DEPOSIT
TO THE CREDIT OF
THE WITHIN NAMED PAYEE
HOPEWELL B
PRINCETON BANK AND
HOPEWELL, N. J.

PRINCETON
TRUST
COMPANY

CERT.
257026

NON

FOR DEPOSIT
TO THE CREDIT OF
THE WITHIN NAMED PAYEE
HOPEWELL BRANCH
PRINCETON BANK AND COMPANY
HOPEWELL, N. J.

PRINCETON
TRUST
COMPANY

CERT.

NON

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

S. E. STEIN, as Trustee in Bankruptcy, etc.,

Plaintiff,

vs. 70 Civ. 715

RAND CONSTRUCTION COMPANY, INC.,

Defendant.

----------x

Before:

HON. KEVIN THOMAS DUFFY,

District Judge

February 24, 1975
10:00 a.m.

APPEARANCES:

HAHN HESSEN MARGOLIS & RYAN, ESQS.,
Attorneys for Plaintiff
BY: NORMAN TURK, ESQ. and
EUGENE I. SELKER, ESQ., of counsel.

RALPH HEYMAN, ESQ.,
Attorney for Defendant.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

MR. TURK: If your Honor please, at the outset of the trial I would like to take this opportunity to introduce to the Court Mr. Eugene I. Selker, a member of the bar of the State of Ohio, and also admitted to practice in the various federal courts, and ask that the Court permit him to sit in and act as an attorney in this matter.

THE COURT: Yes.

MR. SELKER: Thank you, your Honor.

THE COURT: All right, call your first witness.

MR. TURK: If your Honor please, we would like to try to stipulate on some of the documents to save time. May we do that?

THE COURT: Surely.

Do you have a copy of the list?

MR. TURK: We have the actual documents.

THE COURT: How many documents are involved?

MR. TURK: I believe about eight or ten documents, your Honor.

THE COURT: All right, take five minutes, go through them, see if you can stipulate to them. All right?

(Recess)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

THE COURT: Certain documents are going to be introduced into evidence on consent· is that correct?

MR. TURK: That is correct, your Honor.

THE COURT: All right, Plaintiff's Exhibit No. 1 is what?

MR. TURK: Plaintiff's Exhibit No. 1 will be an agreement between the parties dated April 7, 1967.

(Plaintiff's Exhibit 1 was received in evidence)

xx

THE COURT: Plaintiff's Exhibit No. 2 is what?

MR. TURK: Will be escrow agreement between the parties dated April 7, 1967.

(Plaintiff's Exhibit 2 was received in evidence)

xx

MR. TURK: Plaintiff's Exhibit 3 is certificate of deposit dated April 7 for $25,000 returning to Seaway Floor & Paving Co., Inc.

THE COURT: All right, Plaintiff's Exhibit No. 4 is what?

MR. TURK: Letter dated October 17, 1967, from Laborers' Local No. 779 addressed to Rand Construction Company.

xx

(Plaintiff's Exhibit 4 was received in

evidence)

THE COURT: Plaintiff's Exhibit No. 5 will be what?

MR. TURK: Letter dated August 31, 1967, from Rand Construction Company to Seaway Floor & Paving Company.

(Plaintiff's Exhibit 5 was received in evidence)

xx

MR. TURK: No. 6 is letter dated August 31, 1967, from Rand Construction to Laborers' Local Union No. 779.

(Plaintiff's Exhibit 6 was received in evidence)

xx

MR. TURK: No. 7 is letter dated August 31, 1967, from Rand to Carpenters' Local Union No. 31.

(Plaintiff's Exhibit 7 was received in evidence)

MR. TURK: Plaintiff's Exhibit 8 is letter from Rand dated August 31, 1967, addressed to BM&PIU Local Union No. 9.

(Plaintiff's Exhibit 8 was received in evidence)

THE COURT: Mr. Heyman, do you know what BM&PIU Local Union No. 9 means?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

MR. HEYMAN: Bricklayers, Masons and Plasterers International Union.

THE COURT: Do you agree that that is what it means?

MR. TURK: We so stipulate.

THE COURT: All right, go ahead.

MR. TURK: Exhibit No. 9 is the letter from Laborers' Local 779, Welfare & Pension Funds, addressed to Seaway, dated September 18, 1967.

(Plaintiff's Exhibit 9 was received in evidence)

MR. TURK: No. 10 is letter from Rand dated August 18, 1967, to Seaway.

(Plaintiff's Exhibit 10 was received in evidence)

MR. TURK: Exhibit 11 is letter from Rand dated August 11, 1967, to Seaway.

(Plaintiff's Exhibit 11 was received in evidence)

MR. TURK: Plaintiff's Exhibit 12 will be letter from Rand dated July 28, 1967 to Seaway.

(Plaintiff's Exhibit 12 was received in evidence)

MR. TURK: Plaintiff's Exhibit 13, letter

from George H. Bohlinger, Jr., counselor at law, to Rand Construction, dated October 26, 1967.

(Plaintiff's Exhibit 13 was received in evidence)

xxxxx

MR. TURK: Exhibit 14, letter from Seaway to Trenton Trust Company dated October 28, 1967.

(Plaintiff's Exhibit 14 was received in evidence)

MR. TURK: Exhibit 15, letter from George H. Bohlinger to Seaway dated October 31, 1967.

(Plaintiff's Exhibit 15 was received in evidence)

MR. TURK: Exhibit 16, letter from George H. Bohlinger dated October 31, 1968, addressed to S. Tanenbaum, Rand Construction Company.

(Plaintiff's Exhibit 16 was received in evidence)

MR. TURK: No. 17, receipt signed by Rand Construction Company dated October 31, 1967.

(Plaintiff's Exhibit 17 was received in evidence)

THE COURT: All right, you have no objection to these, Mr. Heyman, is that correct?

MR. HEYMAN: Yes, sir. No objection.

THE COURT: Call your first witness.

V I R G I L O G L E T R E E , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TURK:

Q Mr. Ogletree, were you an officer of Seaway Flooring & Paving Company, Inc.?

A Yes, sir.

Q Were you an officer of this corporation in March and April of 1967?

A Yes, sir.

Q What office of that corporation did you hold?

A Vice president.

Q As vice president of that corporation, were you personally familiar with the day to day operations of that corporation?

A Yes, sir.

Q Did you participate in any negotiations in behalf of Seaway with Rand Construction Company of New York City in March or April of 1967?

A Yes, I did.

Q Would you kindly state to the Court what

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

negotiations you personally participated in?

A We were trying to negotiate with Rand to get a contract for a job in Skillman, New Jersey.

MR. HEYMAN: If your Honor please, may I interrrupt at this point. I appreciate that we don't have a jury here and I am going to restrict my objections to a bare minimum, but in the recital of this witness, I would appreciate it if he would indicate with whom he negotiated so that I can meet the issues as they are presented.

THE COURT: Time and place. You don't have to stand up, counsel, either.

Q Mr. Ogletree, in reciting these dealings you had with our --

THE COURT: Wait a minute. Who did you talk to at Rand?

THE WITNESS: Mr. Hilton -- yes, Mr. Hilton, yes.

THE COURT: When was this?

THE WITNESS: You mean what month?

THE COURT: About when.

THE WITNESS: I would say April or May or sometime along in there.

Q Where did these negotiations and conversations

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 791-1020

go on?

A Well, some took place on the telephone.

THE COURT: Did any take place face to face?

THE WITNESS: Well, not that early with me, no.

THE COURT: All right, these were all on the phone?

THE WITNESS: Yes.

THE COURT: All right. Go ahead.

Q Mr. Ogletree, I show you Plaintiff's Exhibit 1, and ask if this was an agreement entered into between Seaway and Rand on April 7, 1967 for the purchase of Seaway performing certain services for Rand in Skillman, New Jersey.

A Yes.

Q Were you personally present when that agreement was executed?

A No.

Q I show you Plaintiff's Exhibit 2, an escrow agreement dated April 7, 1967. Would you please look at that exhibit? Does your signature appear on that exhibit signing in behalf of Seaway?

A Yes, on this one.

Q Do you recall where that exhibit was signed?

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FOLEY SQUARE, NEW YORK, N.Y. 791-1020

A In Mr. Hilton's office.

Q Were there any conversations between Mr. Hilton and yourself prior to the execution of that agreement?

MR. HEYMAN: Objection, your Honor, it is merged into the instrument and speaks for itself.

THE COURT: Go ahead. Was there a conversation?

MR. HEYMAN: All right.

THE COURT: You don't have to stand up, counsel.

A Yes.

THE COURT: What was it?

THE WITNESS: Before we signed this agreement here, Mr. Hilton wanted a performance bond, and that if we could not deliver, so they wanted us to put up $25,000 in their hands, and we objected to that. We said that we would up up C.D.s, certificates of deposit. That was the conversation before that we signed this agreement.

THE COURT: You then signed it?

THE WITNESS: Sir?

THE COURT: And then you signed it?

THE WITNESS: Yes, sir.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

THE COURT: Is there anything else?

THE WITNESS: There may be, but I can't recall right now.

THE COURT: All right, go ahead, counselor.

Q Was there any conversation as to in whose name the C.D. should remain?

A Yes, there was.

Q And would you kindly state what that conversation was?

A First, they wanted the C.D.s in their name, and we said we would -- well, let me rephrase that, I ar sorry. They wanted the cash money, and then when we agreed to the C.D.s we told them that we would put it in Seaway, and we could not draw the money until the both of us would sign and Seaway would receive the interest I think every three months, if I make no mistake.

THE COURT: All right.

Q And after that conversation about the manner in which the C.D. should be posted, was Exhibit No. 2 then signed?

A Yes.

Q And at the time that was signed, had the CD which is Plaintiff's Exhibit 3, be issued by the Trenton Trust Company to Seaway? Would you please look

at Exhibit 3?

A What was that again now?

Q At the time Exhibit No. 2 was signed, was Exhibit No. 3, the certificate of deposit, already issued by the Trenton Trust Company?

A I don't think -- I am trying to remember -- I don't recall.

Q You don't recall? Fine.

THE COURT: If you don't, that is the best answer you can give.

THE WITNESS: Thank you.

THE COURT: They are both dated the same day, counselor.

MR. TURK: I refer the Court to paragraph No. 2 of Exhibit 2, which identifies the C.D. by number.

THE COURT: All right, fine.

Q Following April 7, 1967, did Seaway undertake to begin to do the work pursuant to the contract entered into between R.T.C. and Seaway?

A Yes, we did.

Q And did there come any time after Seaway began doing the work that Seaway began having problems?

A Yes.

Q Would you kindly state to the Court when

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Seaway began to have problems following April 7 of 1967?

A Well, sir, I can't remember, but it was a few weeks or months after we started the job. We began to have financial difficulties. The exact date I can't recall.

THE COURT: All right. But you are talking about financial difficulties at this point.

THE WITNESS: Yes.

THE COURT: All right.

Q If you look at Exhibits 4 through 12, which is a series of correspondence, will that refresh your memory as to approximately when the financial problems arose?

A Yes.

MR. TURK: Could the witness please see those exhibits?

Q Have you had the opportunity to look at those? Would you please look at those exhibits?

A Yes.

Q Mrs. Ogletree, after looking at those exhibits, can you state when Seaway began having its financial difficulties?

A It was in August.

Q Of what year?

A Of '67.

Q Will you kindly state what these difficulties were?

A We were having financial difficulties meeting our obligations.

Q When you say meeting your obligations, which obligations were you having trouble meeting?

A Well, with the paying the unions and the welfare and pension funds where to keep the men working.

Q Did you also at that time owe money to the Internal Revenue Service on withholding taxes?

A Yes.

Q Did you owe suppliers for materials?

A Yes.

Q Did you have any cash flow in the corporation at that time?

A Very little.

Q Was Seaway at that time engaged in any other projects other than the one they were performing for Rand?

A Yes, they were.

Q What other projects were they engaged in at that time?

A We had a job with Green & White or Overmeyer.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Q Pardon me, is Green & White or Overmeyer the same organization?

A Yes.

Q Please continue.

A We were having financial difficulties with them because of the fact they did not pay us.

MR. HEYMAN: Objection, if your Honor pleases, has nothing to do with this case at all.

THE COURT: I will take it. It's just that he is having his financial difficulties detailed.

MR. HEYMAN: All right.

THE COURT: Go ahead.

A They did not pay us, so this put us in a bind, we could not meet our obligations.

Q What other jobs were you presently in the course of doing?

A That was --

Q August of 1967.

THE COURT: Do you have a document to show this man? You are taxing his memory. This is many years ago.

Q Mr. Ogletree, I show you this document, and can you tell me what this document is.

THE COURT: No, does that refresh your

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FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

recollection.

Q Does that refresh your recollection? Look through the document.

Can you state what that document is? Is this the bankruptcy petition of Seaway?

A Yes.

Q May I please have it? This is a certified copy and the plaintiff is offering this in evidence.

MR. HEYMAN: May I see it?

THE COURT: Sure.

MR. TURK: Certified by the district court in Ohio.

MR. HEYMAN: If your Honor pleases, I am not going to object to the admission of this but I respectfully direct the Court's attention to the fact that the obligations which are set forth herein with respect to the taxes are as of the date that the petition is filed, and that was February 27, 1968. The Court will take notice of that.

THE COURT: Yes.

(Plaintiff's Exhibit 18 was received in evidence)

THE COURT: Are there any other documents? Any other documents that you intend to introduce whatso-

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ever?

MR. TURK: The other documents will have to be identified by another witness unless Mr. Heyman will stipulate.

THE COURT: All right, Mr. Ogletree, when you filed this document, which is Plaintiff's Exhibit No. 18, which is a bankruptcy petition, you swore to it.

THE WITNESS: Yes.

THE COURT: And was it true?

THE WITNESS: Yes, sir.

THE COURT: And it was complete?

THE WITNESS: As far as I know.

THE COURT: All right. Go ahead.

Q In reviewing the schedules set forth in Exhibit 18, will it refresh your memory as to what the financial problems and the obligations of Seaway were in August of 1967?

A Well --

THE COURT: Here, take a look at Schedule A. Does that help you out at all?

THE WITNESS: Yes.

THE COURT: All right, you can look at it as you answer. What were the other financial problems of Seaway at that point?

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A The unemployment compensation we couldn't meet. The union we couldn't meet; and Department of Taxation, Department of Internal Revenue, county auditors, Ohio Bureau of Unemployment Compensation.

THE COURT: There were a number of other debts outstanding, is that correct?

Q Did you owe tradespeople money?

A Yes.

Q When the corporation began having these problems in August of 1967, did you communicate information of this to anybody at Rand?

A Yes.

Q Kindly state when you communicated this information, to whom it was, and what was said between you and that party.

MR. HEYMAN: And when.

THE COURT: Yes, of course when.

MR. TURK: Well, I asked when.

A I called New York City to -- and I talked with Mr. Hilton, and I explained to him our financial plight, and explained that we would not be able to continue unless we got some type of financial assistance.

I explained to him we could not meet the obligations that we had and owing the suppliers as well as

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the internal revenue, and I think at that time that he wrote a letter to Seaway, and explaining to us that if we did not meet the obligations, that they were going to have to make some different arrangements.

MR. HEYMAN: Your Honor, may we have that letter as the best evidence, please?

THE COURT: Sure, if there is such a letter. Do we have it?

Q Would you look through the Exhibits 4 to 12 and see if that letter is any of the letters marked.

A Is that in here?

THE COURT: No, that is this pile right here.

Q Not the copies of the letters. See if the letter you are referring to is among those letters, Mr. Ogletree.

A Yes.

Q You have that letter?

A Yes.

Q Would you kindly state what exhibit number that is, Mr. Ogletree?

THE COURT: It is on the back. It is Exhibit 5. Who is the Izzie?

THE WITNESS: Sir?

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THE COURT: Who is Izzie?

THE WITNESS: Izzie? That was the superintendent.

Q Is that the superintendent who worked for Seaway?

A Worked for Seaway, yes, sir.

Q Mr. Ogletree, at about the time you received the letter which is marked --

MR. HEYMAN: Just a moment if I may, your Honor, I keep jumping up because I am used to doing that.

May I respectfully direct the Court's attention to that particular letter in relation to what the witness testified, that he was told that he would receive no more money.

THE COURT: I read it. I have read the letter and I was here for the testimony. Don't worry about it.

MR. HEYMAN: Thank you, sir.

Q Mr. Ogletree, at about the time that the letter, Exhibit No. 5, was written, August 31, 1967, did you have other conversations with Mr. Hilton regarding the financial plight of Seaway?

A Yes.

Q Did you in these conversations detail to

him the problems Seaway was having in other jobs?

A Yes, I did.

Q And could you kindly state exactly what the conversation between Mr. Hilton and yourself was?

A Well, I explained to Mr. Hilton that Seaway was in deep trouble, and that we had other jobs that we were having problems with; and Mr. Hilton told me that if we would -- that they would meet the payroll every other week, that they would pay one week and we would pay one week.

Q Did Mr. Hilton suggest or did you suggest anything in your conversation with Mr. Hilton regarding meeting any of the other obligations of Seaway?

A Yes, he said that they would pay the unions, and the suppliers.

Q Did, in about August of 1967, Rand begin to make direct payments to any of the unions which were obligations of Seaway?

A Yes, yes.

Q Did in about August of 1967 Rand begin to make direct payment to any suppliers who Seaway was obligated to?

A I don't remember if it was in August when they began to make payments or not.

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Q Well, to the best of your recollection when were these payments made?

A I don't know when they were made but they did make payments to suppliers.

MR. TURK: May we take a moment to refresh his memory with some checks?

THE COURT: Counsel, how many other documents do you have that you intend to offer?

MR. TURK: There are a number of checks and other documents to be identified by other witnesses.

THE COURT: I don't care about that. That is not the question I asked you.

MR. TURK: Three or four additional documents beside these checks I am calling upon him for.

THE COURT: Why don't you show them to your opponent now? Take five minutes. Show it to him now; and in taking five minutes we might be able to resolve this thing into a documentary case.

(Recess)

MR. HEYMAN: With respect to the exhibits, Judge, I have a comment.

MR. TURK: We put in Exhibit 19, certain checks issued by the defendant.

THE COURT: All right. Any objection to

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that, Mr. Heyman?

MR. HEYMAN: No, sir, I submitted them.

THE COURT: Fine.

(Plaintiff's Exhibit 19 was received in evidence)

MR. TURK: Exhibit No. 20 is a copy of a telegram.

THE COURT: All right, any objection to that?

MR. HEYMAN: No, sir, I submitted that.

(Plaintiff's Exhibit 20 was received in evidence)

xx

MR. TURK: Exhibit No. 21 is a petition to sell in the bankruptcy proceeding together with supportive documents which it is stipulated between plaintiff and defendant were never served upon the defendant.

MR. HEYMAN: And also may I just look at that for a moment -- one further comment, Judge, I respectfully direct your attention to the fact that it was filed on April 8, 1968, in the bankruptcy court and the attached documents indicate dates of September 30, and 12/31 of '67.

THE COURT: All right.

MR. HEYMAN: And that the defendant never

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received or was served with a copy of any of those papers.

THE COURT: Any objection?

MR. HEYMAN: No objection.

(Plaintiff's Exhibit 21 was received in evidence)

xx

BY MR. TURK:

Q Mr. Ogletree, in August of 1967, you testified you had conversations with Mr. Hilton of Rand regarding the financial plight of Seaway; is that correct?

A Yes, sir.

Q Will you kindly state approximate times you had conversations with Mr. Hilton and what the conversations were regarding the financial problems of the Seaway?

A Well, I can't give you exact date and time, but I can give you the conversation.

Q Could you give approximate dates of it or months?

A Well, it would be from August on.

Q August on until when?

A Until we signed the agreement offer to give the $25,000.

Q Would that be the documents -- would that be

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October 28 of 1967?

A It could be.

Q May we just refresh his memory with that one exhibit as to the date the documents were signed over?

I show you -- may the witness see Exhibit No. 14, please.

Mr. Ogletree, the conversations you were referring to occurred between August of 1967 and the date of that document you have in your hand?

A Yes, sir.

Q And what is that date?

A That date was --

Q Look at the very bottom.

THE COURT: October 28, right?

Q The very bottom on the left as you look at it.

A Oh, yes, yes, 28th of October, yes.

Q Will you kindly state the substance, what was said by you to Mr. Hilton and what was said by Mr. Hilton to you in the course of these conversations when you advised Mr. Hilton of the financial problems of Seaway?

A Yes, I told Mr. HIlton that we were having financial problems, and we could not meet our obligations. I explained to him that we had other jobs in process -- in

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progress, and I explained to him that one of the biggest jobs that we had was Green & White and Overmeyer and that they owed us quite a sum of money, and I think about $70,000; and that they also was having financial problems, and we were not able to get this money in order to meet our obligations.

I explained to him about jobs that we had in Cincinnati that we were having problems also. We had a job in Michigan that we were having problems with.

I explained this to Mr. Hilton and Mr. Hilton told me that what they would do, they would pay every other week to meet the payroll, because we could not meet the payroll, and we could not pay the union funds, the pension and welfare because if we did not pay the union then they would pull the men off the job.

So I explained all of this to Mr. Hilton.

Now, as time went on, Mr. Hilton asked me, would we be willing to sign the $25,000 offer to them.

Q Before we get to that, in the course of your conversations with Mr. Hilton about the financial problems you were having on the speculative jobs, did you tell him the reasons why these financial problems came about?

A Yes.

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Q And what was stated by you to Mr. Hilton regarding these problems?

A I told him that Green & White Construction Company was having problems and they could not pay us, that they gave us a note, and we tried to negotiate the note in the banks, but they would not honor the note.

Q Did you have any other conversations with Mr. Hilton stating the reason for your problems on the particular jobs?

A Yes, I explained to him that the internal revenue, the withholding taxes that they were on our backs about the withholding taxes, and all the money that we could get we had to pay them.

Q Were there any further conversations with Mr. Hilton as to the cause of the problems on these speculative jobs?

A It's been a long time, I am trying to think. I am sure there was but right now I can't --

Q Did you have any discussions with Mr. Hilton regarding the costs on the job you were doing for Rand?

MR. HEYMAN: Objection.

THE COURT: My objection, your Honor, is that it has no relevancy whatsoever with respect to the issues involved in this case as to what his costs were

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on the job. He has a contract for a sum of money.

THE COURT: I'm aware of that. I will permit it. Go ahead?

THE WITNESS: Answer?

THE COURT: Yes.

A Yes, the welfare and pension fund, this was on the Rand job that we were having problems with, and also the payroll on the Rand job. This was the Rand job. This is what I was referring to when I said that he agreed to pay one week and we would pay one week. This was the Rand, specifically the Rand job.

Q Did you have any discussion with Mr. Hilton regarding the contract price on the job?

A Yes, I talked to Mr. Hilton and I said to Mr. Hilton, I said, "Well, Mr. Hilton, I realize now that the job was grossly underbidded." I says, "Would you -- we don't want any profit but I know that you all took the job off, and you have some idea what the job would cost. Would you at least give us the money that the job would cost, because the job was underbidded."

Mr. Hilton said, "Well, we'll talk about that when the job is completed," and I agreed to sign the $25,000 offer.

THE COURT: Was this in the same conversation

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where you signed the document which is Exhibit No. 14?

A What was 14? I don't remember.

THE COURT: That is the one where you turned over the $25,000.

THE WITNESS: Yes, it was -- the conversation was prior to me turning it over, yes.

THE COURT: All right.

Q At the time you told Mr. Hilton that the Rand job was underbid, did you discuss with him the price you were getting on any of the other jobs that Seaway was doing?

A Yes.

MR. HEYMAN: Objection.

THE COURT: Yes, that is sustained, yes. It's pretty far out, counselor.

MR. TURK: If your Honor pleases, one of the issues before the Court will be the financial condition that the debtor corporation was in prior to the transfer of the document and what knowledge should be imputed to the defendant, and I feel that any information given to the defendant regarding financial problems, the fact that they were operating jobs at a loss is most certainly a relevant factor to be considered by the Court.

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THE COURT: Go ahead, answer the question.

A Yes, the jobs that we had, those jobs were underbidded; and we were having problems on all of the jobs because they were underbidded.

THE COURT: Did you tell this to Mr. Hilton?

THE WITNESS: Yes.

THE COURT: All right. Go ahead.

Q After having these discussions with Mr. Hilton, was any agreement entered into between Mr. Hilton and yourself regarding the manner in which Rand would make payments either to Seaway or to the persons to whom Seaway owed money?

A Yes.

Q And what was the agreement entered into between Mr. Hilton and yourself?

A The agreement was that they would pay the unions, they would pay one week and we would pay the next week, as far as the payroll was concerned. Then they start meeting the payroll directly. They would not send the money back to us. It would take place in New Jersey.

Q Was there any agreement with Mr. Hilton as to how certain of the suppliers on the job would be paid?

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A Yes.

Q What was that agreement?

A The agreement was that we would assign the money where they could pay the suppliers.

Q I show you Exhibit 19, a quantity of checks issued by Rand, and ask that you look at that exhibit, please.

Mr. Ogletree, after looking at those checks, were those checks that are Plaintiff's Exhibit 19 issued by Rand in accordance with the understanding you arrived at with Mr. Hilton?

A Yes.

Q Are all of these checks that you have in your possession payable jointly to Seaway and somebody else?

A Is all of them?

THE COURT: They are in evidence. I will read them.

Q When these checks were issued, will you kindly describe the procedure Seaway was requested to follow as regarding the endorsement on the checks?

A Some of these checks was sent to Seaway for us to endorse to send back to meet the payroll.

Then, you are speaking about these checks right here?

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Q That is correct, sir.

A Well, I think all of these checks here was sent to Seaway, and in turn we would meet the obligations ourselves.

Q May I have the checks, please?

Showing you check No. 24813 dated -- I will withdraw that one.

MR. HEYMAN: Show them all to him, will you?

Q I show you check No. 24515 dated August 24, 1967, payable to Seaway Floor and Rednor & Klein, and ask that you note that you describe the endorsement -- we will describe the endorsement on the back.

Withdrawn. May I have that, please?

MR. TURK: I call to the Court's attention that these checks are endorsed by Seaway, signed by an officer of the corporation, and then deposited in the account of the other payee.

MR. HEYMAN: To expedite matters I will stipulate and concede that every one of the checks that have been offered as that exhibit bear a joint endorsement whichwas sent to Seaway endorsed by Seaway and sent to the supplier.

THE COURT: All right.

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Q In August of 1967 were you familiar with the financial condition of Seaway?

A Yes.

Q Were you familiar with the financial condition of Seaway on October 28, 1967?

A Yes.

Q Were you familiar with the financial condition of Seaway at the time of the filing of the petition in bankruptcy?

A Yes.

Q During all of these three times mentioned was the ocndition of the corporation substantially the same?

A Yes.

Q Prior to entering into the agreement of April 7, 1967, was Seaway asked to give any financial statement to Rand?

A Yes.

Q They were asked to give? Was any financial statement given to Rand?

A No; I don't think. I'm not sure.

MR. TURK: No further questions of this witness.

THE COURT: All right. You can inquire

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seated. Don't get up.

MR. HEYMAN: Seated, Judge?

THE COURT: Yes.

We will adopt the practice used in Jersey just for today.

MR. HEYMAN: Thank you.

CROSS-EXAMINATION

BY MR. HEYMAN:

Q Mr. Ogletree, when for the first time did you submit any information to Rand Construction Company with respect to trying to get a contract from them on this particular job?

A I don't remember the date.

Q Was it sometime in March of 1967?

A It could be.

Q How did you learn about this particular job? Was it through the Dodge reports or some bulletins that were published in the construction industry?

A Probably so.

Q And did you in fact send them a letter soliciting an opportunity to bid as a subcontractor on this job?

A Yes.

Q And did you then on November 29 -- withdrawn.

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I will show you this instrument and ask you whether or not you submitted this in writing and sent it to Rand Construction Corporation?

THE COURT: That is Defendant's Exhibit A for identification.

(Defendant's Exhibit A was marked for identification)

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Q Did you send that to Rand?

A Did I send it?

Q Yes.

A No, I did not.

Q Or someone in your company send it?

A Yes.

Q Who?

A Mr. McEwen.

Q Who was Mr. McEwen?

A He was the president of Seaway Floor & Paving Company.

Q In that instrument did you indicate the number of jobs thatyou had completed or were in the process of completing?

A Yes.

Q Did you also list certain financial institutions which you gave as references? When I say you, I mean

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the company.

MR. TURK: Objection. The document speaks for itself.

THE COURT: My question is do you object to it going into evidence? It was just marked for identification.

MR. TURK: No, we have no objection, your Honor.

THE COURT: All right, fine.

MR. HEYMAN: I offer it in evidence.

MR. TURK: No objection.

(Defendant's Exhibit A was received in evidence)

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(Defendant's Exhibit B was marked for identification)

xx

Q I show you this instrument, Defendant's Exhibit B for identification. Look at it first.

Did you or anyone on behalf of the bankrupt corporation submit that to Rand Construction Company?

A Yes.

MR. HEYMAN: Offered in evidence.

MR. TURK: No objection.

(Defendant's Exhibit B was received in evidence)

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Q I direct your attention to Plaintiff's Exhibit 1, that's the contract. I direct your attention to that exhibit and I ask you to look at the paragraph next to the last one which says "Guaranty." Do you see that paragraph?

A Yes.

Q That is stricken, is that correct?

MR. TURK: Objection, your Honor.

A Yes.

THE COURT: Either it is or it is not. Was it stricken at the time you signed it? Maybe that is more important.

THE WITNESS: That I can't answer. I don't remember that.

Q Whose initials are on the side of the instrument?

A I don't know. They are not mine.

MR. TURK: If your Honor pleases, this document is not signed by this witness.

MR. HEYMAN: That is not the point. You offered it in evidence.

THE COURT: I am aware of the fact. He doesn't recognize the initials. Go ahead.

Q Now will you look at article 11 on the third

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page of that agreement.

A Third page?

Q Yes.

A I only have two pages.

THE COURT: This is what he is talking about right here.

MR. HEYMAN: I withdraw that. I mean article 23 on the last page. I'm sorry. Article 23 on the last page.

A Yes.

Q Now, I refer you to Plaintiff's Exhibit 2 in evidence.

THE COURT: What is it?

MR. HEYMAN: I just want to point out one specific thing.

THE COURT: What is the description of Plaintiff's Exhibit 2?

MR. TURK: It is the escrow agreement, your Honor.

MR. HEYMAN: Don't categorize it. Just say it's an exhibit.

MR. TURK: It's labeled on the back.

MR. HEYMAN: Just say it's an exhibit. Let the Court determine what it is.

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MR. TURK: The back labels it.

MR. HEYMAN: I don't care what the back labels it. I can call it a black piece of paper and it could be white.

Q You witnessed this instrument, is that correct? Your signature appears on it?

A Yes.

Q Did you read this instrument before you signed it?

A Yes.

Q Did you go over it thoroughly?

A Yes.

Q And it was signed by Mr. McEwen as president and witnessed by you as vice president, is that correct?

A Yes.

Q Did there come a time, Mr. Ogletree, when you started upon this job and you were receiving regular payments, is that correct? You were receiving payments as you performed services?

A No, in the interim --

Q I didn't ask you in what interim. I asked you did you receive payments.

A You said regular payments.

Q As you began this job?

A Yes, we did not.

Q You didn't?

A After we requested payments.

Q All right, that is your answer.

I am going to show you a series of checks which I am going to offer as one exhibit. First I will show them to my friend.

THE COURT: Let the record reflect plaintiff's counsel at this time has an opportunity to review the checks.

MR. TURK: No objection to these checks being marked in evidence, your Honor, all of them.

THE COURT: All right.

(Defendant's Exhibit C was received in evidence)

xx

Q Mr. Ogletree, did you run this job?

A No, I did not.

Q Who ran the job?

A Fellow by the name of Sam -- I don't remember his last name.

Q How often did you visit this job site during the course of the work that was performed by your company?

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A I don't recall, but I would say I was there maybe on five or six occasions.

Q During the whole period, is that correct?

A Yes.

Q And how often did Mr. McEwen visit the premises, if you know?

A Well, Mr. McEwen, he visited the premises more so than I did.

Q He was actually the mechanic on this job, the fellow who knew how to do the work, isn't that so?

A Now, wait a minute. He was the actual mechanic on the --

Q He ran the job basically?

A No, he did not.

Q Did he supervise the superintendent?

A You said could he?

Q Did he?

A No, he did not.

Q Who supervised the superintendent?

A We had a man by the name of Isidore Lichtenstein.

Q Yes?

And was Mr. McEwen familiar with the placing of concrete and all the work that is involved in so doing?

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A Oh, yes, he knew.

Q He had worked,as a matter of fact, before he went into business as a laborer in that kind of work?

A I can't answer that. I don't know.

Q You don't know. All right.

Isn't it a fact or, if you know, that approximately 30 or 35 per cent of the value of this job was in the ready mix concrete that had to be purchased?

A You say 30 or 35 per cent?

Q Approximately, yes. If you know.

A Well, I don't know.

Q Do you know that there came a time when the company or someone acting for the company went to a certain Warner Company for the purpose of purchasing ready mix concrete to be used on this job? Do you remember that?

A Yes, that's true.

Q And what did Warner Company say at that time, if you know, to anyone acting on behalf of your company?

A That I don't know.

Q You don't know that Warner said that "We cannot extend credit to you but if Rand Construction will agree to guaranty the account, we'll furnish the

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concrete"?

A That I don't know.

Q You don't know?

A No.

Q All right.

Do you know that this situation obtained with respect to perhaps a couple of other suppliers?

A That I don't know.

Q And do you know whether this came into being at the very beginning of the job long before --

A That I don't --

Q Just a minute. I didn't finish the question.

-- long before October 28, when the $25,000 was received by Rand.

A No, I don't.

Q You do not know that this course of conduct began very early in the proceeding whereby joint checks were made out?

A No.

Q You don't. Now, you say that you had conversations with Mr. Hilton beginning about August of 1967; wherein you indicated the plight of the company, the problems that you were having financially, is that

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correct?

A True.

Q And you told him about the other jobs that you had, is that correct?

A Yes, we were having problems.

Q Yes, and you told him about the problems you had in collecting your money from the other people, is that correct?

A True.

Q But you did tell him that you had a substantial sum of money outstanding, is that correct?

A When you say substantial, what do you mean?

Q You tell me.

A No,you're asking the question. I want to know what you mean.

Q How much money did you have outstanding?

THE COURT: How much was outstanding at that time?

Q How much with all these jobs.

A Well, I would say -- I am guessing now, you know -- maybe --

THE COURT: Estimate.

A Maybe 90,000.

Q Incidentally, don't you have any records or

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anything to come in here and tell us about these facts other than your memory as to matters which occurred in 1967?

A No, I don't have the records because the -- at the time when the bankruptcy they took all of the records.

Q Who took all of the records, the trustee?

A Whoever was the man at the head out there, the receivership, I guess.

Q The trustee appointed by the court, is that correct?

A Whoever it was. I don't understand bankruptcy.

Q There was somebody appointed by the court, is that correct?

A Yes, true.

Q Whatever he was, is that correct?

A Yes.

Q And he took the records, is that correct?

A I don't know who took the records. I know the records was gone.

Q Did you turn them over to anybody?

A Of course, the whole place was under their --

Q All right.

A Yes.

Q You turned them over to someone, is that correct?

A Yes.

Q Now you say that you told Mr. Hilton about the trouble you were having with your collections and you say you had about 90,000 outstanding. You told him you had a job in Cincinnati, you had a job in Michigan, you had the job with Overmeyer, is that correct?

A Yes.

Q And all of these jobs you were having trouble getting money?

A Yes.

Q And you also told him that you were having trouble with the Internal Revenue Service with respect to withholding taxes, is that correct?

A Yes.

Q Nevertheless, it's your testimony that with this history of what you have told us here today, that Mr. Hilton nevertheless kept you on this job, is that correct?

A That's true.

Q And he proceeded to actually issue checks directly to your company subsequent to the time in or about August, as you say, of 1967, that you were giving

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him this picture of complete financial distress, is that correct?

A Correct.

Q Were you bankrupt at that time so far as you know in August of 1967?

A We were in financial trouble, yes.

Q That's correct. And the reason you were in financial trouble is because you had these accounts receivable with these other people that you weren't able to collect, is that correct?

A That's true.

Q Had you instituted any suit or action against them or brought them into court to collect this money?

A No.

Q Were you still working on these jobs? You continued to work on these jobs, is that correct?

A Some of the jobs, yes.

Q Let's continue.

Did there come a time when you had a conversation, as you said, with Mr. Hilton, with respect to the fact that you were having these problems? Did you suggest to Mr. Hilton at that time that the job is about 75 per cent complete? Did you tell him that?

A Could have.

Q Sure. And did you say to him, "Now, we have got that $25,000 sitting up there in the Trenton Trust Company, and we can use that to pay some of our bills"?

A No, I did not.

Q You didn't say that?

A No, I did not.

Q At that time, when you had this $25,000, had you already been made aware by the Internal Revenue Service that you owed them an awful lot of money?

A Long before then.

Q But nevertheless, you agreed to turn over the $25,000 which was in the Trenton Trust Company in accordance with the agreement of April 7, 1967, to turn that over to Rand Construction, is that correct?

MR. TURK: Objection, your Honor.

THE COURT: It's a document in evidence.

MR. TURK: He is asking about the agreement.

MR. HEYMAN: I said my question was, in the face of the fact -- in the face of the fact that you owed the government so much money, as you indicated, nevertheless you agreed to turn over the $25,000 which was on the certificate of deposit to Rand at that time, is that correct?

A That's true.

Q Wasn't it pointed out to you at that time that you had deposited that $25,000 with Rand as a guaranty for the performance of the work?

A I knew that from the beginning.

Q Of course. And, as a matter of fact, in August when you started to tell him about these bad things and the bad situation of your finances, Mr. Hilton didn't say to you "Well, we are going to call you now, we are going to put you off the job," did he?

A Yes, he mentioned that if we did not, you know, meet the obligations they would be forced to.

Q Did he say he was going to take your $25,000 at that time?

A No, he didn't say that, no.

MR. HEYMAN: I have no other questions, Judge.

THE COURT: All right. Any redirect?

MR. TURK: I do have redirect, your Honor. Do you want to commence the redirect now or after lunch?

THE COURT: No, right now. You are not going to be that long.

REDIRECT EXAMINATION

BY MR. TURK:

Q Mr. Ogletree, you testified that you had accounts receivable of possibly $90,000 in August of 1967, is that correct?

A Yes. Could be more or less.

Q Well, approximately, somewhat more or somewhat less.

If you looked at the bankruptcy schedules which are -- which is Exhibit 18, would that refresh your memory as to approximately what the liabilities of the corporation were in August of 1967?

A Yes.

Q Would you please look and give a figure?

THE COURT: Is there any necessity for this man to look and give a figure at this point in view of the fact that he's already testified when he signed this it was true and accurate?

MR. TURK: That is in February of 1968.

Q Would the figure of the liabilities set forth in the bankruptcy petition be approximately the same as it was in August of 1967?

A I would say so.

MR. HEYMAN: Objection, if your Honor pleases.

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I think this is so far --

THE COURT: It's speculation. Go ahead.

Q And would the liabilities have been approximately the same on October 28th of 1967?

MR. HEYMAN: Again that is speculation.

THE COURT: It is.

Q Were you personally familiar --

THE COURT: Now, how is this man supposed to know really?

Q Do you have knowledge of what the financial condition of Seaway was on October 28, 1967?

A Yes.

Q And were the debts that Seaway had on October 28th of 1967 approximately the same amount of debts it had at the time it filed the petition in bankruptcy?

MR. HEYMAN: Objection.

A Yes.

MR. HEYMAN: Objection.

THE COURT: You mean to say that between October 28 until the time you filed the petition in bankruptcy that you did nothing?

A We worked trying to, you know, receive money. We were in bad shape. We owed bills.

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THE COURT: All right.

BY MR. TURK:

Q Mr. Ogletree, when you filed the petition in bankruptcy, was it indicated -- well, I call to the Court's attention it was indicated there were four accounts receivab the amount undetermined.

THE COURT: All right.

Q At the time subsequent to the filing of the bankruptcy petition, did you testify in the bankruptcy court in Cleveland, Ohio, as to these accounts receivable that Seaway had?

MR. HEYMAN: Objection.

THE COURT: I don't know. I am going to permit it but I think what you are trying to do at this point is trying to impeach your own witness.

MR. TURK: All right, I will withdraw that question.

No further questions of this witness.

MR. HEYMAN: May I have one question, Judge?

THE COURT: Counsel, you have one question.

MR. HEYMAN: That's what I said, one question. And I also told you how I was going to take in there and I see that I undershot it.

THE COURT: All right. Go ahead.

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RECROSS EXAMINATION

BY MR. HEYMAN:

Q Mr. Ogletree, is it not a fact that Seaway continued to work on the project under contract with Rand Construction subsequent to October 28, 1967 until on or about January 11, 1968?

A That I am not sure. It could have true. I don't know.

THE COURT: But it did continue for a period after October 28, is that correct?

THE WITNESS: Yes, oh, yes.

THE COURT: All right. Step down.

MR. HEYMAN: May I just offer in evidence a check for $1640 which was issued to Seaway, a loan, dated January 11, 1968; to Seaway.

(Handed to Mr. Turk.)

MR. TURK: It is not marked as a loan. It is a payment.

THE COURT: Do you object to it, counsel?

MR. HEYMAN: That is Defendant's Exhibit D.

xx (Defendants' Exhibit D was received in evidence.)

THE COURT: You do not object?

MR. TURK: No objection.

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THE COURT: All right. Received.

Step down.

(Witness excused.)

THE COURT: All right, gentlemen.

I believe it is time for lunch. See you back here at 2 o'clock.

(Whereupon, a luncheon recess was taken to 2:00 o'clock p.m.)

AFTERNOON SESSION

2:00 p.m.

THE COURT: All right, the next witness has been called. State your name for the record, sir.

E L M E R J. W H I T I N G, J R., called as a witness by the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TURK:

Q Mr. Whiting, what is your home address?

A 3318 Van Aken Boulevard, Cleveland, Ohio.

Q What is your occupation or profession?

A I am a certified public accountant.

Q And you are admitted as a certified public accountant in which state, sir?

A Ohio,North Carolina and Louisiana.

Q Are you licensed in any other profession other than as a certified public accountant?

A I am a member of the Bar of the State of Ohio.

Q Are you also a member of the Bar of any federal jurisdictions?

A Yes, the Northeast District of Ohio, the Sixth Circuit Court, United States Supreme Court.

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Q Would you kindly state to the Court your education, training, and experience.

MR. HEYMAN: I will stipulate he is a licensed practitioner and an accountant.

THE COURT: All right.

MR. HEYMAN: He is well qualified to testify.

THE COURT: All right.

Q Mr. Whiting, did there come a time when you were engaged as the accountant for Seaway Paving Company, the bankrupt corporation?

THE COURT: You mean after bankruptcy?

MR. TURK: No, prior to bankruptcy.

THE COURT: All right, prior to bankruptcy.

A Yes.

Q Approximately when were you retained as the accountant for that corporation?

A In the fall of 1966.

Q At this time that you were engaged as the accountant for Seaway, were the books and records of that corporation current?

A No.

Q Did there come a time where under your supervision as the accountant for the corporation, the books were brought up to date? When I refer to the books I refer

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to the financial books and records.

A The answer is to the best of my ability, and I say that because I had some reservations as to whether I had all the information.

Q When you say whether you had all the information, what information could have been lacking, to your knowledge?

A Well, areas that was -- what I was mostly concerned with was whether I had full knowledge of all the liabilities of the corporation.

Q With the information you had available, when were the books and records brought up to date?

A In the spring of '67.

Q And at the time the books and records were brought to date in the spring of 1967, were the assets greater than the liabilities in that corporation?

MR. HEYMAN: Objection, if your Honor please. A proper foundation has not been laid.

THE COURT: No, I will let it go in. Go ahead, answer it.

THE WITNESS: The liabilities did exceed the assets.

Q And did you, in your opinion, as an accountant and as an attorney, at that time was the corporation

insolvent?

THE COURT: Answer it?

A Yes, it was insolvent.

Q From the spring of 1967 until the end of October of 1967, did you prepare monthly financial statements for the corporation?

THE COURT: If you remember.

A For most of the months. I can't say I did for each and every month.

Q Would it be accurate that for most of the months between the spring of 1967 and the end of October of 1967, financial statement were prepared month end.

THE COURT: That's what he said, yes.

A Yes.

Q And on any of the month-end statements which you prepared or were aware of between the spring of 1967 and October of 1967 were there any months in which the assets exceeded the liabilities?

A No.

Q Would it be correct to say that in each of these statements, that the liabilities exceeded the assets?

A Yes.

Q Would it be correct to state that in your opinion on each of these occasions you felt the corporation was

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insolvent?

Q Yes.

Q Did you, on or prior to April of 1967, prepare any financial statement for the corporation for submission along with proposed contract bids to Rand?

MR. HEYMAN: If he knows.

MR. TURK: I asked if he prepare any.

THE COURT: Did anyone ask you to prepare it and did you prepare it?

THE WITNESS: No.

Q To your knowledge in the examinationof the books and records of the corporation, did anyone prepare any financial statement which was submitted to go with the proposal to Rand?

MR. HEYMAN: Objection.

THE COURT: Sustained.

Q Do you know of any statement that was submitted, any financial statement of the corporation, that was submitted; prepared and submitted to Rand?

MR. HEYMAN: Objection.

THE COURT: I don't know how he could know of his own knowledge, counsel. Sustained.

Q Mr. Whiting, before testifying today, were any documents or statements of Seaway made available for your

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inspection?

A Yes.

Q Will you kindly state to the Court which documents they were?

MR. HEYMAN: Objection. They should have been produced as a basis for his testimony.

THE COURT: No, not necessarily.

MR. TURK: It is in evident already.

THE COURT: You mean all this?

MR.TURK: No, not all.

Q I show you the petition in bankruptcy which has previoulsy been marked in evidence, and was that shown to you earlier today for the purpose of refreshing your recollection as to the financial condition of the corporation?

A Yes.

MR. HEYMAN: Objection, if your Honor pleases. He is testifying now as to a petition which was filed on February of 1968.

THE COURT: Counsel, I am aware of that.

MR. HEYMAN: Well, I won't object any more, Judge. I'm sorry.

Q Mr. Whiting, could you state when the last time was that you saw the financial books and records of this corporation?

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THE COURT: Were you hired by the trustee, Mr. Whiting?

THE WITNESS: No.

THE COURT: After the trustee came in, you didn't see the financial books and statements, did you?

THE WITNESS: No.

THE COURT: All right.

Q When was the last time you actually saw the books and records of this corporation?

A I don't know, some time in the middle of February.

Q Of which year?

A 1968.

Q Where were these books and records at the time you saw them?

A At Seaway Floor & Paving's office.

Q At the Seaway office.

Are you in a position to evaluate the distinction, if any, of the financial condition of the corporation, between October 31, 1967 and the time of the filing of the petition in bankruptcy?

MR. HEYMAN: Objection.

THE COURT: No, I will let him answer the question. The question is was he in a position. Go ahead.

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MR. HEYMAN: All right.

A Yes, I guess I was in a position.

Q And will you state what the comparative condition of the corporation was financially on October 31, 1967 and the time of the filing of the petition in bankruptcy?

A Disastrous.

Q Was it disastrous on October 31, 1967?

A Yes.

Q Was it disastrous for a period of time prior to that date?

A Yes.

Q Did you so advice the principals of Seaway that the condition was disastrous?

THE COURT: No.

MR. HEYMAN: He might be getting into trouble there.

THE COURT: No, you are not going to answer that.

THE COURT: You are objecting to it?

MR. HEYMAN: Yes, I am objecting.

THE COURT: All right, sustained.

MR. HEYMAN: For his benefit.

Q Mr. Whiting, was there any significant change in the assets or liabilities of the corporation betw een October 31, 1967 and what is reflected in the petition in

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bankruptcy.

THE COURT: To the best of your recollection.

A There is one item in there that I had raised some question about but -- and that's the obligation that is listed -- what is the Edelmeyer, the cement company, in Chicago.

THE COURT: That has nothing to do with this case.

THE WITNESS: No.

THE COURT: All right.

THE WITNESS: But it does indicate there are some liabilities set forth here that did not exist in October.

THE COURT: All right.

Q In your opinion, was the corporation bankrupt on October 31, 1967? Were they insolvent?

THE COURT: He's already said yes.

MR. TURK: No further questions of this witness.

THE COURT: Any cross.

MR. HEYMAN: Just a few things.

CROSS EXAMINATION

BY MR. HEYMAN:

Q Mr. Whiting, when you were first engaged in the fall of 1966, as you testified, you weren't sure that you had all the records relative to liability, is that correct?

A That is right.

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Q That is what you said.

Did you have the same misgivings about whether you had all the records relating to assets at that time?

A In 1966?

Q Yes.

A Yes.

Q All right.

Now, thereafter, from time-to-time you audited the books of the bankrupt, prepared monthly statements periodical sometimes missing a month here or there, is that correct?

A I'm not sure you'd say I audit them. Audit would indicate that I had a relationship that was a little more independent than it was.

Q Tell us what your true relationship was.

A Well, basically, I was trying to reconstruct the records and create the record rather than review what someone else had done.

Q Did there come a time when you recreated them to the best of your ability?

A Yes.

Q And did there come a time subsequent to that time when you continued to examine the records of the company?

A I amnot sure I understand your question because I think I stated that I did not examine somebody else's

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records.

Q No, no. Follow me now.

A All right, well, examined to me implies that I, you know, reviewed somebody else's work.

Q I will withdraw the question.

A All right.

Q Would you consider yourself to have been the accountant for the company in the generic term that that suggests?

A Yes.

Q And did you receive payment for your services?

A Yes.

Q Did you receive payment each time you rendered the services?

A No.

Q And when you became aware, from the time actually when you first examined these books and records, that they were insolvent, did you feel that this company at that point was engaging in a course of conduct where they might possibly be defrauding their creditors?

MR. TURK: Objection.

THE COURT: Yes, sustained.

Q While they were insolvent in your mind all through this period, you continued to receive payments from them,

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is that correct?

THE COURT: No, he said he got it intermittently.

Q All right.

How much would you say you got between 1966 and the date that the petition was filed, I think February 28, 1968?

MR. TURK: Objection.

THE COURT: Is that really relevant?

MR. HEYMAN: Irrelevant, sir?

THE COURT: Is it really relevant?

MR. HEYMAN: Well --

THE COURT: If you will explain to me how it is, I will let you ask it.

MR. HEYMAN: The point I am making is this: Here is a company that is ostensibly according to him insolvent. As a matter of fact he uses the phrase bankrupt which technicians involved in bankruptcy have failed to explore.

THE COURT: Yes, I know.

MR. HEYMAN: In any event --

Q Do you have any work sheets in your possession that employed during the time that you were doing the books?

A No.

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Q None at all?

A No.

Q Was it your customer to keep worksheets?

A Yes.

Q What happened to the worksheets?

A At the time the bankruptcy petition was filed Seaway Floor & Paving was under investigation by Internal Revenue.

Q Yes?

A And there was a revenue agent working on the premises in their offices, with whom we were cooperating and in the course of this cooperation I had made available to him all the information and work papers and so forth that I had concerning Seaway Floor & Paving.

Q What about the worksheets and the record of Seaway themselves?

A They were all on the premisesof Seaway Floor & Paving. The revenue agent was working in their office.

Q Weren't your work sheets in effect duplicates of the records that they had?

A No, there may have been the same information was in them but they certainly wouldn't be duplicates.

MR. HEYMAN: All right. I have no other questions.

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THE COURT: All right.

Do you have any redirect?

All right, sir.

(Witness excused.)

THE COURT: Next witness.

C H A R L E S R. A D A M S, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TURK:

Q Mr. Adams, what is your address?

A My home address or office address?

Q Both, please.

A My office is 1005 Superior Building, Cleveland, Ohio. My home address is 1901 East 12th Street, Cleveland, Ohio.

Q Mr. Adams, what is your profession?

A I am an attorney.

Q And in what state are you admitted to practice law?

A In the states of Minnesota, North Dakota, and Ohio.

Q Are you admitted to practice in any federal jurisdictions?

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A Yes, Northern Judicial District of Ohio.

Q Mr. Adams, were you the attorney who represented Seaway Paving in the filing of its petition in bankruptcy, which is the exhibit in front of you?

A I am.

Q Did you prepare the petition and the schedules which you have in front of you in behalf of Seaway?

A Yes, I did.

THE COURT: Did you generally prepare and supervise the preparation of the document and the schedules?

A I did, as the Judge indicated, supervise and prepare, assisted in preparing.

Q From whom did you obtain the information contained in those schedules?

A I obtained information from the records located at Seaway Floor & Paving office at 1206 Union Avenue; from an executive secretary on the premises; some information from Mr. Olgltree.

Q Were any financial books and records of Seaway ever turned over to you for care and custom?

A No, they were not turned over to me. I kept certain books and records that I had found on the premises of Seaway Floor & Paving.

Q Which books and records were these?

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A Oh, I have no recollection of everything. There were checkbooks, some vouchers, some letters, various papers that I thought was very important that I got from Seaway Floor and Paving office.

Q Did there come a time when these records were called upon to be produced by any agency of the United States Government?

A Yes. Under subpoena, the IRS subpoenaed me, a duces tecum subpoena, and I was required to bring all of the records in my possession to the IRS office; and they kept them.

Q From the time you turned the records over to the Internal Revenue Service, have you ever seen those records?

A No, I have never -- I never saw those records any more.

Q Do you know of your own knowledge whether or not the Internal Revenue Service has ever returned those records to anyone in any manner or form affiliated with Seaway?

A My own knowledge, I do not know whether they were ever returned.

THE COURT: They certainly weren't returned to you, though, right?

THE WITNESS: They were not returned to me.

Q At the time the petition in bankruptcy was filed,

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were there records of the corporation, financial records of the corporation on the premises of the bankrupt?

A Yes, there were several files, several file cabinets; desks, all of them containing records of Seaway Floor & Paving.

Q Do you know whether or not the property on the premises at Seaway were ultimately sold at public auction?

A Yes, I attended the auction of all the fixtures, equipment, furniture, supplies, that were sold at public auction of Seaway Floor & Paving, and there were books and records sold at the time. It is customary in bankruptcy practice, people will buy these records too.

Q Following the sale of the assets of Seaway at Public auction, did you have occasion to go to the premises formerly occupied by Seaway?

A One time.

Q And at that time, did you look to see if any of the financial books and records were still present at the premises?

A I knew they were not because the building was totally cleaned out. The sale was confirmed by the Court, and the purchasers had removed all the equipment, et cetera, that they had purchased.

Q Did that include whatever books and records were on

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the premises?

A It did include it.

Q In the preparation of the schedule of liabilities within the bankruptcy petition, could you please look at the petition, Mr. Adams, is that a firm Edelmeyer listed as a creditor of the bankrupt?

A I recall the name Edelmeyer.

THE COURT: Come on, either there is or there isn't. Don't make this man sit here and go through it. I have to go through it myself.

A I recall that name, yes.

Q Did you hear Mr. Whiting's testimony that he did not feel that Edelmeyer should be listed as a creditor of the bankrupt?

A Yes, I heard that testimony.

Q Was there a le gal reason employed by you for the listing of Edelmeyer as a creditor?

MR. HEYMAN: Immaterial, I object.

THE COURT: All right. This man's abilities are not the slightest bit being tested in this situation.

MR. HEYMAN That is right.

THE COURT: How much is the Edelmeyer thing? Can you two stipulate what it is?

MR. HEYMAN: I don't know what it is. It is

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It is their schedules. I never saw those, Judge.

THE COURT: There is a couple of hundred dollars?

MR. HEYMAN: I will even stipulate that it is either the correct amount or the incorrect amount, as the case may be.

MR. TURK: It is approximately $32,000, your Honor.

THE COURT: All right. B ut you felt it had to be included in, is that correct?

THE WITNESS: I felt it should be included in in the schedule.

THE COURT: All right. And that is why you put it there?

THE WITNESS: That is why I put it there.

THE COURT: All right.

Q Was there a reason you felt it should be included?

THE COURT: All right. If you want to ask go ahead.

A Edelmeyer, there was some type of pledge of security or something for Edelmeyer that had matured and Edelmeyer had received money on account which would have in a technical sense wiped out this debt, but it was my opinion, the same as in this one, that this was an avoidable payment or could possibly be termed as a preference, so I included them in there, in the event if the trustees should

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collect that money, that then they would become a creditor rather than someone else.

And I think that schedule, all the schedules indicate that any transactions that you have over a period of time should be included in the schedules.

Q Do you know of your own knowledge what the offer was for the fixtures and requipment of Seaway at the bankruptcy sale?

THE COURT: I am at a complete loss. I don't understand what the relevancy of the question, much less the answer, would be. It really would be taxing this man's memory.

A I was about to say I don't recall exactly what that is.

THE COURT: The answer is he doesn't recall.

MR. TURK: All right, fine.

No further questions of this witness.

MR. HEYMAN: Just two questions, Judge.

CROSS EXAMINATION

BY MR. HEYMAN:

Q Do you have Rand Construction listed as a creditor in the schedules?

A They are listed. I don't think, I don't know if they are listed as a creditor or as owing Seaway Floor &

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Paving.

Q I have never seen them. That is why I am asking.

A Well, as I indicated several times up here, this thing, all this occurred in 1968, I think.

Q All right. The Judge will tell me about it.

THE COURT: All right, what is your other question.

MR. HEYMAN: After I get that answer, it is the second question, Judge.

THE COURT: It is Schedule B-3.

MR. HEYMAN: Schedule B-3 is a creditor.

THE COURT: Schedule B-3 , choses in action. Debts due petitioner, open account. Accounts receivable from Rand Construction Co.

MR. HEYMAN: That is not the question. The question is were they listed as a creditor?

THE WITNESS: I don't think they are listed as a creditor. I think they are listed --

Q Now , the same argument you employed with respect to this Edelmeyer, you listed them because you felt that the money that Edelmeyer had gotten from the trustee were successful, it would become a claim, isn't that what you said? If the trustee was successful in getting the money back from Edelmeyer, then it would belong in the schedule

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A-3, is that correct?

A No.

Q A-2, A-2 creditors?

A A-2. A-2 is secured creditors. A-3 would be the unsecured creditors, it should be -- it would become A-3 creditors.

Q That is hy you put Edelmeyer in there?

A Yes.

Q But you didn't put Rand in A-3?

A I didn't put Rand in there because, No. 1, Rand Construction Company, taking the $25,000 within the four-month period of time, I was relatively certain that this was within the four-month period of time and the trustee could reach that money.

Q How about Edelmeyer?

A It had been more than the four-month period of time. As a matter of fact, I think that was also settled wherein --

Q I didn't ask you whether that was settled. I asked you why Edelmeyer, you say it was outside the four-month period?

A It was.

Q Then why could the trustee have gotten any money back in your opinion, sir, in my opinion, if the trustee were able

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to show that they were aware of the financial plight of Seaway Floor & Paving, even if it had been a year, a preference of over a year, wherein they took funds from a bank, that the trustee would have a right to go after it.

Q Do you know now that the limit is four months, don't you?

A Well, you have some state limitations that carry up to one year. And Ohio is one of those states.

Q All right, sir. Okay.

MR. HEYMAN: No other questions.

THE COURT: All right.

MR. TURK: I have no further questions of this witness.

THE COURT: All right.

Off the record.

(Discussion off the record.)

(Witness excused.)

THE COURT: Next witness.

MR. TURK: We may not have any other witness. We may read in portions of the deposition.

THE COURT: No, you are not going to read in portions of the deposition. If you have a deposition, hand it up.

MR. TURK: The deposition is voluminous, your Honor.

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THE COURT: I don't care how big it is.

MR. HEYMAN: I was going to offer it anyway.

MR.TURK: We have a stipulation with counsel.

MR. HEYMAN: First offer the deposition.

THE COURT: Wait a minute. Who is the deposition of?

MR. TURK: Of an officer of the defendant corporation.

THE COURT: All right.

Who is the person?

MR. TURK: He is present in the courtroom.

THE COURT: Just mark the whole thing. It is Plaintiff's Exhibit No. 22.

xx (Plaintiff's Exhibit 22 was received in evidence.)

MR. HEYMAN: I don't think that is an executed copy.

THE COURT: One was executed?

MR. TURK: Yes.

THE COURT: All right.

MR. HEYMAN: No objection.

THE COURT: What is your stipulation?

MR. SELKER: Let the record show that the parties will stipulate that the plaintiff is the duly appointed and

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acting qualified trustee in bankruptcy for the bankrupt, Seaway Paving Company.

MR. HEYMAN: So stipulated.

THE COURT: Anything else?

MR. SELKER: That the transfer of the certificate of deposit in question occurred within four months of the date of the filing of the petition of bankruptcy.

THE COURT: I think that is a question of fact that I have to --

MR. HEYMAN: That is a question of fact in my memory.

THE COURT: -- that I have to get out of the documents in evidence stipulated to?

MR. HEYMAN: No, it is a question of fact.

MR. SELKER: Stipulated that the effect of such transfer was to enable the creditor to obtain a greater percentage of his debt than other creditors of the same class.

MR. HEYMAN: Oh, no, you expect me to stipulate to that?

THE COURT: No.

MR. HEYMAN: You are stating it wrong.

THE COURT: How do you want to state it?

MR. SELKER: You want to state it?

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MR. HEYMAN: I think what he sounded me out on was, would I stipulate that it was found as a fact, if it was found as a fact that by the virtue of the receipt of the sum of $25,000, the defendant then got a greater share than he would have gotten --

THE COURT: All right.

MR. HEYMAN: That is a different situation.

THE COURT: All right. Anything else?

All right, plaintiff rests?

MR. TURK: Yes.

THE COURT: Defendant? If I am going to read his deposition, do you want him to testify?

MR. HEYMAN: Your Honor, we have a naked record of a witness saying that certain things happened.

MR. HEYMAN: Five minutes, Judge, on the clock.

THE COURT: Go ahead.

S O L T A N E N B A U M, called as a witness by the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HEYMAN:

Q Mr. Tanenbaum, are you the president of the defendant?

A I am.

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Q How long has the corporation been in existence?

A Since January 1957 or late '56.

Q And the basic work is general construction?

A Building construction.

Q Did you hear the testimony of the various witnesses here today?

A I did.

Q Specifically, the testimony of Mr. Ogletree?

A I did.

Q I take you now to some time before October 31, 1967, several days before was there a conversation with Mr. Ogletree and Mr. McEwen at your office?

A I remember a conversation with Mr. Ogletree. I don't recall Mr. McEwen being in the office.

Q This is what? Seven, eight years ago?

A Yes.

Q What was the conversation that you had with Mr. Ogletree relative to a certain certificate of deposit?

A After we discussed the payments, what moneys, if any, Rand owed Seaway Paving, current payments, the requisitions being processed by the State of New Jersey for work put in place the previous month, and the requests of certain suppliers and vendors for payment, it was Mr. Ogletree's suggestion that the 25,000 be used to pay current

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bills.

Q At this point approximately how much of the work percentage would you say had been performed by the bankrupt under its contract?

A About 75 per cent, perhaps a little more.

Q Do you have any schedule or record of the company which will indicate how you arrive at that figure of 75 per cent?

A Yes, it was based upon the percentage of completion as incorporated in our records in addition to the State of New Jersey.

Q I show you those documents and ask you whether these are the books and records of the corporation from which you determined the percentage you have just testified to.

xx (Defendant's Exhibit E was marked for identification.)

A Yes, these are the accounts payable ledger sheets for the Seaway account.

Q So that on or about October 28, 1967, from those records as you testified approximately 75 per cent of the work had been performed by Seaway, is that correct?

A Yes, a gross of about $156,500 put in place and earne by Seaway Floor & Paving.

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Q And the total contract was?

A $208,000.

Q Giving you the approximate percentage of 75 per cent?

A Yes.

MR. HEYMAN: I offer that in evidence, if your Honor please.

THE COURT_ Do you object?

MR. TURK: No objection, if your Honor please.

xx (Defendant's Exhibit E was received in evidence.)

Q Mr. Tanenbaum, at the time you had this conversation with Mr. Ogletree with respect to the certificate of deposit, did he tell you anything about the financial condition of the company at that time?

A No, I do know that we had, just prior to that, received some notices from the pension and welfare funds of the various unions. We were already monitoring Mr. Ogletree's payments to his suppliers and to labor, as we do in general, to all subcontractors, and we also had a couple of his suppliers that Rand had guaranteed the accounts to.

Q Let me interrupt you. Prior to the commencement of work by the bankrupt, had the suppliers to whom they had

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gone insisted that you guarantee the accounts?

A There were a couple who had.

Q Because they hadn't known these people, they had never been in that area and had never dealt with them before, is that correct?

A That was primarily the reason. These were -- one of the major suppliers was a ready mix.

MR. TURK: Objection, there is no foundation for that opinion, your Honor.

THE COURT: I will let it stand. Go ahead.

Q And with the deposit of $25,000, were you secure insofar as the performance of work by the bankrupt?

MR. TURK: Objection.

THE COURT: No.

MR. TURK: Asking for a conclusion.

THE COURT: Absolutely. It is a legal conclusion too.

MR. HEYMAN: I will rephrase the question.

Q Did you receive any recommendations on behalf of the work performed heretofore by the bankrupt?

A You mean prior to giving them the subcontract?

Q That is correct.

A Yes, we had.

Q There is in evidence Exhibit -- which one is

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that, the International Paper -- that would be -- there is one there for International Paper, Exhibit A or B --

THE COURT: B.

Q It is Exhibit B. Was that delivered to you by the bankrupt, that letter from International Paper?

A Delivered or sent or mailed in when we were first negotiating the subcontract.

Q In addition did they send you a rendering or a proposed schedule of how they were going to perform the work?

A Well, Mr. McEwen told me personally how he proposed performing the work and impressed me with his knowledge of the technical details involved.

In addition, he had sent in, I remember, some ph tographs of other jobs that they had done.

Q Did you ever receive any information, either directly from Internal Revenue Service or from Ogletree with respect to the fact that money was owed to Internal Revenue Service?

A At what time?

Q Prior to the time you gave them the contract.

A The subcontract, no.

Q Subsequent to the time you gave them the contract?

A No, much later.

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Q When for the first time was it after the petition in bankruptcy was filed?

A Yes, it was.

Q That was the first time you received any notice, is that correct?

A Right, that is right.

Q Did you continue to make payments to the bankrupt subsequent to October 31, 1968 when you received the $25,000?

A Yes, we did, all during November and December I believe we continued to make payments to them.

Q All right.

I now show you a series of checks commencing with the date 11-3-67 which is subsequent to October 31st, and ending with January 3, 1968, and I ask you to identify these for the Court.

MR. TURK: If you are putting it in evidence, I have no objection.

THE COURT: All right, put them in evidence.

xx (Defendant's Exhibit F was received in evidence.)

THE COURT: Marked as a series of checks.

Q Were all of these checks made payable directly to --

MR. HEYMAN: All right, you will read them, all right.

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Q Mr. Tanenbaum, assuming that all of the information which Mr. Ogletree testified to today that he indicated to Mr. Hilton, incidentally, about the situation and the affairs of the bankrupt corporation, at or about the time when you received the $25,000, what would have been the custom and usa of your company with respect to that?

MR. TURK: Objection.

THE COURT: I will have to sustain it. How is Mr. Hilton?

THE WITNESS: Mr. Hilton is my partner, my associate. He is the vice president of the corporation.

THE COURT: All right.

Q Did you deal with Mr. Ogletree?

A Yes, I did.

Q Did you recognize him this morning?

A No, his appearance has changed.

Q Did he recognize you?

A Yes, he did.

Q Did he greet you?

A He greeted me by name.

Q Is it your testimony that he dealt with you and not with Mr. Hilton in these financial matters?

MR. TURK: Objection.

THE COURT: No. He couldn't know whether he dealt

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with Mr. Hilton.

A We are kind of a small corporation, your Honor.

THE COURT: How many officers do you have?

Q How many officers do you have?

A Two.

THE COURT: Where does Mr. Hilton hang his hat, one of the offices?

A Next door to me.

THE COURT: Did you see Mr. Ogletree going in to see Mr. Hilton?

THE COURT: You saw him once?

THE WITNESS: He was -- no, I saw him more than once, on a couple of occasions. At the very beginning, your Honor, the contract -- Mr. Hilton, the way we divide our responsibilities is that Mr. Hilton negotiates subcontracts, supervises the estimators, I take over the actual production from that point on.

I supervise the payment of the bills, I supervise the construction superintendents, and I supervise our project engineers who run the job in the office, our other jobs in the office.

MR. HEYMAN: Your Honor, I can have Mr. Hilton here. May I have him here tomorrow for five minutes?

THE COURT: Are you finished at this point?

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MR. HEYMAN: I am finished.

THE COURT: All right, let's find out.

MR. TURK: I would like to cross exam.

CROSS EXAMINATION

BY MR. TURK:

Q Was Mr. Hilton an officer of the corporation during the period of time of the dealings with Seaway?

A Yes, he was.

Q Did Mr. Hilton have authority to enter into agreements to bind the corporation during this period of time?

A Yes, he did.

Q At the time Seaway communicated with Rand soliciting the job, were there any particular reasons why this job was given to Seaway?

A I would say it would be a combination of price, of our understanding of their particular competence in this field, a combination of those two things.

Q All right. Mr. Tanenbaum, I'd like -- were you present at a deposition on September 3, 1974 in New York City when the following question was asked of you. This is on page 81, the bottom of the page, your Honor:

"Can you tell us, Mr. Tanenbaum, whether the State of New Jersey had any requirements at the time

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of the awarding of the Skillman contract for the employment of minority personnel contractors or subcontractors on the job" and your answer was:

"Yes, they did."

Is that correct?

THE COURT: No. "Yes, they did. They required an affirmative action program for the employment of a maximum of minority workmen or subcontractors." Read the whole answer.

Did you hear that question and did you give that answer on September 3, 1974?

THE WITNESS: Yes, I did.

THE COURT: All right.

Q Going further on the same page, the question was asked "Did youhave any other minority subcontractors or personnel on this job?

"A I was thinking as you were talking. I think we probably had some workmen but no other minority owned subcontracting firms."

Was that question asked of you and is that the answer you gave?

A Yes, to both.

Q Were there any other reasons you engaged Seaway to do this job other than the fact that they were a low

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bidder?

THE COURT: He has already detailed it. There were about four of them.

A I was very much impressed with Mr. McEwen. This particular concrete job was very light foundations and basically floor slabs and their particular field of competenc seemed to be in flat work, in producing floor slabs

Q Did you request that Seaway produce a financial statement before you would give consideration to their being engaged?

A I don't recall that we asked for a financial statement. I do recall that in the list of references they gave the names of three banks.

Q Did you actually check with these banks as to their credit ratings?

A I didn't, but my controller did.

Q Do you have any correspondence between your organization and the banks making requests as to their credit standing of Seaway?

A No, we don't.

Q Did anyone from Seaway ever advise you of the fact that they were having financial difficulties prior to October 31, 1967?

MR. HEYMAN: Objection to the form of the question.

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THE COURT: I think it could be framed a little bit better, counsel.

Q Were you advised by anyone at any time after Seaway entered upon the job, and prior to October 31, 1967, that Seaway was having financial difficulties?

A I was advised of a temporary problem. For example they asked me at one point to meet a current payroll and they stated that they would meet the successive payrolls.

THE COURT: Who is they?

THE WITNESS: Very often my conversations were with this man Izzie Lichtenstein that was mentioned here earlier. He was the man in immediate charge of that particular charge. Also the local foreman, Sam, at the job, who is required to actually make out the payroll working for a local bank in Trenton.

And I was always advised also that they had a good deal of receivables. The name Overmeyer came out, was mentioned constantly, that Overmeyer, D.H. Overmeyer, the warehouse builder, owed them a lot of money. And whenever I was advised that they needed some funds to tide them over, it was always on a temporary basis.

Q During this period of time prior to October of 1967, were you personally familiar with the goings-on within the construction industry?

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A Oh, yes.

Q Did you know that Overmeyer had taken over Green & White?

A This is hearsay, Mr. Turk, but I think Green & White was a subsidiary of Overmeyer. I think it was their construction firm that Overmeyer built the warehouses with.

Q Did you have any knowledge prior to October 31, 1967, that either Overmeyer or Green & White were having financial difficulties?

A No, but I think if you read the financial pages of the New York Times today you will find D.H. Overmeyer still advertising his warehouses.

Q Were there statements circulated within the construction industry prior to October 31, 1967, as to the fact that either Overmeyer or Green & White were having financial difficulties?

A Not to my recollection.

Q When in period of time, giving a date as close as you could recall, did you learn of the fact that Seaway was having any financial difficulties?

A Mr. Turk, financial difficulties is such a relative term. If I had any idea that they had real financial difficulties, and they were not paying their

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bills, I would have called in the bond and taken the $25,000 under different terms, under a default notice to them.

MR. TURK: I move that that be stricken, your Honor.

MR. HEYMAN: I submit that is responsive. No, no, it is responsive, go ahead.

A We continued to work with Seaway, to pay them moneys. They continued to do work and earn moneys. They were represented on monthly requisitions to the state for work performed by them.

Q I ask that you look at Plaintiff's Exhibits 4 through which is correspondence from between various locals, contractors, Rand and Seaway, and ask if those -- if that correspondence reflects claims to the effect that Seaway was not meeting its obligations.

THE COURT: Are you going to ask him what these things mean?

MR. TURK: There is correspondence directed to Rand by some of these union locals.

THE COURT: I don't have them here.

MR. TURK: Some of these exhibits, the union local's correspondence to Rand that Seaway was not meeting its obligations.

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A Which ones?

Q Exhibits 4 through 12.

A What is the question again?

Q Is there any correspondence from anyone of the unions included in those exhibits which are addressed to Rand which advises Rand of the fact that Seaway was not meeting its obligations?

A None of these addressed to Rand.

Q I refer you to Exhibit No. 4.

A I.E. Shaffer & Company.

Q Dated October 17, 1967?

A Yes, I am sorry, you are right.

I.E. Shaffer & Company.

Q Does that exhibit advise you by Laborers Local 779, dated October 17, 1967, that Seaway was not meeting its obligations?

MR. HEYMAN: In what amount? It says for one month for the previous one. This is October 17th, it says he had not paid for the month of September $382 for welfare and $382 for pension.

Q Exhibit 6, the letter from Rand Construction dated August 31, 1967 addressed to Laborers Local Union 779. Does that letter indicate that on or prior to August 31, 1967 Rand was aware of the fact that Seaway was not meeting its

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obligation to that local?

THE COURT: What was the question?

(Question read.)

THE COURT: Do you object?

MR. HEYMAN: I object.

THE COURT: Objection sustained.

MR. HEYMAN: I object, yes.

Q Mr. Tanenbaum, I show you a copy of an affidavit purportedly signed by you and ask you if you signed the original of that and gave it to the Internal Revenue Service.

A Yes. This -- I remember this document.

MR. HEYMAN: What is the date on that?

MR. TURK: It is undated.

THE COURT: I don't care what date it is. Mark it as a plaintiff's exhibit.

xx (Plaintiff's Exhibit 23 was marked for identification.)

MR. HEYMAN: If your Honor pleases, that is an undated -- well, I will bring it out on redirect. All right.

THE COURT: Do you object to it?

MR. HEYMAN: No, no.

MR. TURK: Can we stipulate on the approximate

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date of the execution of that?

MR. HEYMAN: Yes, if you want to stipulate.

xx (Plaintiff's Exhibit 23 was received in evidence.)

MR. HEYMAN: You want to stipulate with me that it relates to the same date that they gave him a list of those checks? You remember?

MR. TURK: Fine. What date and I will so stipulate.

MR. HEYMAN: I will give you two dates. Here are the checks and these were sent, that was on or about March 7, 1969, your Honor; that exhibit.

MR. TURK: I will so stipulate based on counsel's statement.

THE COURT: All right.

Q Do you know of your own knowledge how many payrolls Rand met for Seaway prior to October 31, 1967?

A I don't think we ever met a payroll directly, Mr. Turk. We paid them on a regular basis. We paid them more than once a month, and --

MR. HEYMAN: There is an exhibit before the Court which may clarify the situation.

MR. TURK: I have no objection to the witness refreshing his memory.

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MR. HEYMAN: Would you look at Plaintiff's Exhibit --

THE COURT: Wait a second. Nobody believes that the Court knows anything. Isn't it true that under normal conditions, a subcontractor submits a voucher for an amount on a monthly basis, thereafter the full contractor submits to the state government, right?

THE WITNESS: Exactly, your Honor. For work done in the month.

THE COURT: And is the period of time that falls between the time the state government gets it on submission and the state government pays it?

THE WITNESS: Unfortunately this can be as much as six weeks.

THE COURT: All right. Now, when you indicated that you were paying a payroll, were you paying it directly to the workers or were you paying it by paying Seaway earlier than you received it from the state?

THE WITNESS: We were paying Seaway earlier than our once a month payments as the subcontractor called for.

Q Were these payments to Seaway by regular check or by certified check?

A Our checks were regular checks. I have notified

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Mr. Turk that Seaway went to our bank and certified them.

Q Do you know for what period?

A Not all of them but some of them.

Q Do you know for what period of time they continued to certify those checks?

MR. HEYMAN: Objection.

THE COURT: Do I have all the checks?

MR. HEYMAN: You have them all. There are two of them.

MR. TURK: The checks are in evidence.

THE COURT: All right.

Q During the summer of 1967, did Rand make payment directlty to any of the suppliers of merchandise of Seaway?

A Directly?

Q Yes.

A Or by joint check?

Q Either directly or by joint check.

A I think by joint check.

Q Is this a procedure regularly followed in the course of business?

A Quite often.

Q And when you say quite often, is that at times when a subcontractor is in financial distress?

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A No, not necessarily, Mr. Turk. I indicated before that we monitor the subcontractors because of the lien laws of the states and for one reason or another. We very often monitor payments by the subs. We want to make sure that our payments to them are applied properly and in this particular case where we made joint checks we had guaranteed payments to those particular suppliers.

To Warner and Tattersol.

Q Did you make any inquiry from the time the unions began advising you of the delinquency in payments, as to the financial status of Seaway?

A General financial status? No, I don't think so.

Q Did you make any inquiry within the trade as to Seaway's financial condition?

A No.

MR. TURK: No further questions, your Honor.

MR. HEYMAN: I just to clear up the question of these payroll payments. May I have Plaintiff's Exhibit -- it is a telegram, I think it is No. 20, please.

REDIRECT EXAMINATION

BY MR. HEYMAN:

Q Mr. Tanenbaum, would you look at that telegram, please and tell me what date that is?

A November 3rd.

Q 3, 19 what?

A 1967.

Q And you had received the $25,000 October 31, 1967, is that correct?

A No, I think,Mr. Heyman, that we -- there was a weekend in there. I think October 31st was when the --

Q Take my word for it, and counsel will agree, that it is October 31, 1967. Is that correct?

MR. TURK: Well, you say,Mr. Heyman, the instrument was drawn that day.

MR. HEYMAN: No, October 28th was the date it was executed and October 31st the money was paid over by the bank.

MR. SELKER: Was paid over to a Mr. Bohlinger and in turn given to Mr. Tanenbaum on November 3rd. I think those were the facts.

MR. HEYMAN: I think we have an exhibit which shows Mr. Bohlinger mailed it out on October 31.

MR. TURK: If he mailed i on October 31st --

Q In any event, Mr. Tanenbaum, was this the first time that you had given any payroll to Seaway?

A As far as I said, Mr. Heyman, you may say in a loose way, meet my payroll Actually we did not pay the

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men directly. We did not meet the payroll. We made payments.

Q Didn't it say we will meet the subsequent payroll?

A It says we will pay the payroll next week. We will pay the subsequent payroll.

MR. HEYMAN: I have no further questions.

MR. TURK: Can you identify who Mr. Bohlinger was insofar as Rand Construction was concerned?

THE WITNESS: Yes. Mr. Bohlinger was an attorney in the Trenton area that had performed some services for Rand Construction Company, on a couple of prior occasions.

RECROSS EXAMINATION

BY MR. TURK:

Q Did he perform services for Rand Construction?

A Yes, he did.

Q Had he been paid on this transaction with Seaway, his legal fees by Rand Construction?

MR. HEYMAN: Which transaction are we talking about? There are two.

THE COURT: I don't know.

MR. HEYMAN: There are two transactions. One is the preparation of the indemnity agrement and the other one is the recoupment of the moneys from the bank.

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Which one are you talking about?

MR. TURK: I will withdraw the question and rephrase it.

MR. HEYMAN: All right.

Q In any manner or form, did Mr. Bohlinger perform any services on the Skillman, New Jersey job involving Rand and Seaway whereby Rand made payment of his fees?

A Yes.

Q Did Mr. Bohlinger also represent Seaway on that transaction -- regarding legal services regarding this particular contract?

A I don't think so. I wouldn't know, but I know he represented Rand Construction Company.

Q Did Mr. Bohlinger act as Seaway's attorney regarding the preparation of the agreement which is marked Exhibit 2?

A No, that agreement was prepared in our behalf.

Q By whom?

A By Mr. Bohlinger.

Q In your behalf by Mr. Bohlinger?

A Yes. That you mean the bond form, Mr. Turk, when you say --

Q No, I refer to the agreement which is Exhibit 2 without categorizing what type of form it is.

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A Let me see if I understand.

MR. HEYMAN: Here is a copy of it.

A Exhibit 2 -- yes, that was prepared in Rand's behalf.

Q What?

A That was prepared in Rand' behalf.

Q That was prepared in Rand's behalf?

A I call it a bond form.

Q Did you also introduce Mr. Bohlinger to Seaway to perform certain legal services for them?

A I know this was the purpose.

THE COURT: No, no.

MR. HEYMAN: Answer that.

Q Before Seaway began doing any work in the State of New Jersey, did any attorneys advise you that they would have to file a certificate with the Secretary of State of the State of New Jersey?

MR. HEYMAN: Now, if your Honor pleases, let me interrupt at this point on a technical situation. There was no direct testimony advanced by the plaintiff.

THE COURT: I am aware of it. Don't worry about it.

MR. HEYMAN: All right.

And I didn't raise the question.

THE COURT: All right.

Do you know if Mr. Bohlinger filed the necessary certificates for Seaway in the State of New Jersey?

A No, I don't know whether he did or not.

THE COURT: You don't?

A No, I do not.

THE COURT: All right.

Q I ask that you look at Exhibit No. 15, which is a copy of a bill from Mr. Bohlinger. I will show you this one.

A Yes.

Q Is that a bill from Mr. Bohlinger to Seaway?

A It is addressed to Seaway Floor & Paving Company, care of Rand Construction Company, 405 Park Avenue, but I recall it also came under cover of another letter from Mr. Bohlinger, the same date.

Q It is Exhibit No. 16. I will show you a copy of it. Does Mr. Bohlinger send the documents to you and indicate by way of that letter that he is billing Seaway?

THE COURT: I just read it. Go ahead.

MR. TURK: I will let the document speak for itself, your Honor. I have no further questions of this witness.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

REDIRECT EXAMINATION

BY MR. HEYMAN:

Q Mr. Tanenbaum, prior to the time that you had the conversation with Mr. Ogletree about the certificate of deposit being collected for the purpose of paying certain suppliers, did you have a conversation with him with respect to who would pay the legal fees relative to the obtaining of those moneys?

A Yes.

Q What did you say to him and what did he say to you?

A I told Mr. Ogletree when the discussion was had about the using the $25,000, that that might involve a legal fee and that I would expect him to cover that amount.

MR. HEYMAN: I have no other questions.

THE COURT: All right. Step down.

MR. TURK: No further questions of this witness, your Honor.

(Witness excused.)

THE COURT: You rest?

MR. HEYMAN: We rest.

THE COURT: Both sides rest?

MR. TURK: We rest.

THE COURT: All right. Decision reserved, mainly because I have to read all this.

MR. HEYMAN: If your Honor pleases, I was handed a memorandum of law after the recess.

With the Court's permission, I would like to address a short letter to you in lieu of a further memorandum just covering one particular point, if I may, serving a copy upon my friends.

THE COURT All right.

Do you object?

MR. TURK: No, with a right to reply.

MR. HEYMAN: It will only cover one phase.

THE COURT: All right.

MR. HEYMAN: I would have that in within three days, Judge.

- - -

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
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EXHIBIT
U. S. DIST. COURT
E. D. OF N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

S.E. STEIN, as trustee in bankruptcy of the estate of SEAWAY FLOOR & PAVING COMPANY, INC.,

Plaintiff,

-against-

RAND CONSTRUCTION COMPANY, INC.

Defendant.

----------X

EXAMINATION BEFORE TRIAL of RAND CONSTRUCTION COMPANY, INC., the Defendant, by SOL TANENBAUM, taken by the Plaintiff, pursuant to Agreement, held at Rand Construction Company, 404 Park Avenue South, New York, New York, on September 3, 1974, at 3:05 P.M. before a Notary Public of the State of New York.

* * *

Ak-Ret Reporting
COURT STENOS
RICHARD S. DOWNEY
RICHARD C. O'CONNELL

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the sealing, filing and certification of the transcript of the within examination before trial be, and the same hereby are waived; and that said transcript may be signed and sworn to before any Notary Public or Commissioner of Deeds with the same force and effect as if before an officer of this Court.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, are reserved to the trial of this action.

AK-RET REPORTING TR 5-2442
COURT STENOS

A P P E A R A N C E S :

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-and-

NORMAN TURK, ESQ., of Counsel

RALPH HEYMAN, ESQ.,
Attorney for Defendant
614 Franklin Boulevard
Long Beach, New York

* * *

S O L T A N E N B A U M , a witness for the defendant, residing at 420 East 23rd Street, New York, New York, having first been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. SELKER:

Q Would you state your full name and present residence and business address and background in this business for the record?

A My name is Sol Tanenbaum. I live at 420 East 23rd Street, New York, New York. My business address is c/o Rand Construction Company, 404 Park Avenue South.

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Q You have been in the construction business for how long?

A Rand Construction Company is seventeen years old.

Q Your position with the company presently is what?

A President.

Q For how long have you been President?

A Since the beginning of the corporation.

Q Your experience by background in the construction business is what?

A I worked for other contractors prior to Rand Construction Company for a number of years.

Q Are you a professional engineer?

A I am.

Q Mechanical engineer?

A No.

Q Licensed in the State of New York, are you?

A Yes.

Q Are you also licensed in the State of New Jersey?

A No.

Q In connection with Rand Construction Company's work, has Rand Construction Company done a substantial amount of public work?

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A Substantial means --

MR. HEYMAN: Dollars -- in dollars. You tell us, if you will, what has been the experience of Rand Construction Company in doing public jobs.

A At this particular time Rand Construction Company was doing a volume of somewhere in the neighborhood of four million dollars a year.

Q At this particular time you are referring to the year, 1967?

A Yes.

Q And the job that is involved in this controversy is known as the Skillman Trade School -- is that the correct designation?

A Training School for Boys.

Q In your capacity as President of Rand Construction Company, did you have personal control and supervision over this particular job, the Skillman School?

A I was involved to a large extent in the performance of the work. We had a project engineer at the time and my other associates were all involved in various phases of the work.

Q Did you have personal responsibility of preparing the bids for that job?

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A No.

We had an estimator at the time whose primary function was that of preparing bids.

Q Did you have personal responsibility for overseeing those bids and the submission to the State of New Jersey?

A I probably signed the bid, but I don't think that I did the actual work in the preparation of the estimates.

Q Did you have personal responsibility for negotiating the subcontracts or any of them?

A To some extent. One of my associates does that also.

Q Particularly the subcontract on the job, with Seaway Floor and Paving Company, did you have responsibility for dealing with Seaway?

A Yes, to some extent.

Q Could you tell us what was the amount of the contract with the state and the contractor, Rand Construction Company?

A The award was made in two parts.

The initial contract is in the sum of $1,835,000.

Q And the date that the contract was awarded?

A The 21st day of December, 1966.

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Q What was your method of soliciting bids from subcontractors for this job?

A Various, depending upon our past experience --

MR. HEYMAN: He is talking about this job.

THE WITNESS: With this job?

MR. HEYMAN: That's all.

A Again, various -- all right, we had certain subcontractors who performed work for us before in this area that we solicited bids from and other subcontractors that we knew were active in the area, that we had heard of by reputation.

Q Was your habit to contact them by telephone or correspondence and invite their bid for this job?

A By telephone and by post card.

Q Did you do that prior to your submission of a bid figure to the State of New Jersey, which would have been prior to January of 1967?

A Yes, we did.

Q Do you have personal familiarity with the dealings between this corporation, Pond, and Seaway Floor and Paving Company?

A Seaway, I think, we did not have any dealings until we were awarded our contract by the State of New Jersey.

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Q When you finally did have the contract awarded and did have negotiations with Seaway, you, personally, were involved in them, is that correct?

A I was involved to some extent.

Q Going back to the method of inviting your subcontractors to bid on the job, was there any particular reason why you did not invite bids from Seaway prior to your obtaining the contract for the State of New Jersey?

A No, I wouldn't remember at this time why. It would be sheer speculation on my part.

MR. HEYMAN: May I interrupt at this point?

MR. SELKER: Yes.

MR. HEYMAN: Off the record.

(Thereupon, at this time, a discussion was held off the record.)

EXAMINATION BY

MR. SELKER:

Q Mr. Heyman has asked a question here which is to facilitate the deposition.

MR. HEYMAN: Sure.

Q Were you aware of Seaway Floor and Paving Company at the time that you received the award from the State of New Jersey?

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A If you give me a moment, maybe I can refresh my memory.

Q Sure.

A To the best of my recollection we became familiar with Seaway's activities in the area after we submitted our bid to the State of New Jersey.

Q When you say "in the area of", you mean in the geographic area of New Jersey?

A Yes.

Q Do you recall how you first heard about Seaway Floor and Paving Company?

A I think we may have heard about Seaway through the architect. This architect had another project at Clinton Reformatory.

MR. HEYMAN: In New Jersey?

A In New Jersey. Not too far from the site of the Skillman Training School for Boys.

Q What was the architect's name?

A Kramer, Hirsch and Carchidi, and I do remember that Seaway was doing a similar kind of concrete work for the contractor at the Clinton Reformatory.

Q Do you recall the name of this individual architect that called your attention to Seaway?

A No, I don't.

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Q Do you have anything in your file that would refresh your memory as to how you first contacted Seaway?

A How we first contacted Seaway?

Q Yes.

A We may have been approached by Seaway. I see in our files a letter from Seaway, dated November 29th, 1966, with our receipt stamped "December 5th, 1966", in which they give a list of six projects all of which are -- of the same or larger size than our project with the State of New Jersey.

Q May I see that correspondence, Mr. Tanenbaum?

A Yes.

MR. HEYMAN: Yes.

Show it to him.

EXAMINATION BY

MR. SELKER:

Q Referring to a letter in your file which is dated November 29th, 1966, from Seaway Floor and Paving Company, addressed to your company, can we have this marked, Mr. Heyman, as Plaintiff's Exhibit A for identification and we will substitute a copy of that.

MR. HEYMAN: Yes.

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(Whereupon, the aforementioned document was received and marked "Plaintiff's Exhibit A" for identification, as of this date, by the reporter.)

BY MR. SELKER:

Q Mr. Tanenbaum, calling your attention to what has been marked for identification as Plaintiff's Exhibit A, do you recall seeing that letter before?

A I probably did.

You mean before -- before 1966?

MR. HEYMAN: No. Before today.

A Before today, yes.

Q Do you have any document in your file or any independent recollection of how you responded, if you did, to what has been marked as Plaintiff's Exhibit A?

A We sent the plans and specifications to Seaway under cover of our letter of January 10th, 1967. This went by Greyhound Bus on that date.

Q May I see a copy of that and can we have the reporter mark that for identification purposes as Plaintiff's Exhibit B?

(Whereupon, the aforementioned document was received and marked "Plaintiff's Exhibit B" for identification, as of this

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date, by the reporter.)

BY MR. SELKER:

Q Mr. Tanenbaum, you have been good enough to state off the record that upon checking your correspondence further, you can better describe to us how Seaway came to you on this Skillman job.

MR. HEYMAN: I would amend that by saying how he believed it came about.

MR. SELKER: To the best of his knowledge.

A As I said, Mr. Selker, in looking through the records, while you were out, I noticed that the date of our bid to the State of New Jersey for this work was November 28th, 1966.

Since these were public biddings, the entire industry knew that Rand Construction Company was the low bidder by that afternoon. Since the letter from Seaway giving us the list of references is dated November 29th, 1966, the next day, I would believe that they, believing that we were the low bidder, knowing that we were going to do this project, approached us for an opportunity to bid the concrete work for the project and after a discussion with the architect that I referred to earlier, probably came at a later date.

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Q Referring back to your bid to the State of New Jersey, can you tell us from your notes what Rank Construction Company estimate its concrete subcontract would be on this job?

MR. HEYMAN: Before you answer that, for my edification, did Seaway get all of the concrete work under subcontract or did they only get a portion of it?

I don't know this at this point and I'd like to know.

THE WITNESS: No. We subcontracted all the work to them.

MR. HEYMAN: All the work?

THE WITNESS: Yes.

MR. HEYMAN: Now you can answer the question.

A What we estimated the cost of the concrete on the project to be was $158,721 for the base bid and there are some alternates as well.

Q When you say "cost of the concrete", do you mean by that, the cost of the subcontractor's bid for the concrete work or do you mean the cost of the concrete itself? I am not clear what you meant?

A We estimated as the cost of the concrete work.

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MR. HEYMAN: Meaning labor and materials?

THE WITNESS: Labor and materials.

MR. HEYMAN: He wants to know whether it was material or just labor?

THE WITNESS: Complete, to perform the concrete work.

MR. HEYMAN: You're talking about alternates. Continue with that.

A The bid to the State was based upon a certain group of buildings as a base bid and other buildings as added alternates. Each one of those added alternates was a separate price by itself.

Q When you use the word "base bid", is the final contract to which you referred before, premised upon what you have just now stated to be the base bid?

MR. HEYMAN: I think we better clear that up.

MR. SELKER: Let's use the dollars.

MR. HEYMAN: Let me clear it up.

MR. SELKER: If you can, Mr. Heyman.

MR. HEYMAN: I may say this, I am rather familiar with construction terms.

Mr. Tanenbaum, when you talk in terms

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of base bid, are you saying that your estimate for bidding purposes was the sum of $158,721 for all of the work, labor and services incidental to the concrete work, with respect to the prime plans and specifications absent the alternates which were likewise included in the proposal by the State?

THE WITNESS: That's right.

MR. HEYMAN: Do you have the figures with respect to what your estimate of the concrete work, meaning labor and materials would be for the alternates as set forth in the invitation to bids?

THE WITNESS: Yes, I do.

BY MR. SELKER:

Q Before we get into that, let's clear the record on the word "prime" and "alternate".

Is it correct when Mr. Heyman uses the word "prime", you understand that word to mean the bid that Rand Construction Company made to the State of New Jersey that represented and resulted in a contract in the amount of $1,835,000?

A The $1,835,000 for the intial contract was based

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upon our bid --

MR. HEYMAN: That's not the question.

Do you call that the prime contract as distinguished from the subcontract?

THE WITNESS: Yes. This is the prime contract.

BY MR. SELKER:

Q Mr. Heyman used the word "alternates," does the word "alternate" in this context mean other construction contemplated by the State of New Jersey if the state had funds? Is that what you referred to?

A That is exactly right.

Q As far as this prime contract and the one that you have in your hands, which is dated the 21st day of December, 1966, which we will mark for identification purposes as Plaintiff's Exhibit C, this contract included your estimate, that is, Rand's estimate for concrete work of $158,000, is that correct?

MR. SELKER: Off the record.

(Whereupon, at this time, a discussion was held off the record.)

(Whereupon, the aforementioned document was received and marked as "Plaintiff's Exhibit C" for identification, as of this

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date, by the reporter.)

MR. SELKER: Please mark this agreement, dated April 7, 1967, as Plaintiff's Exhibit D for identification, please, between Seaway and Rand Construction.

(Whereupon, the aforementioned document was received and marked "Plaintiff's Exhibit D" for identification, as of this date, by the reporter.)

BY MR. SELKER:

Q Calling your attention to what has been marked for identification as Plaintiff's Exhibit D, will you explain to us the thirty-six thousand dollar figure under the paragraph "Option" as it is included or not included within what you previously defined as the prime contract, Plaintiff's Exhibit C.

A It is not included in the original prime contract as set forth before.

MR. SELKER: We'll stipulate to Mr. Heyman's explanation of the thirty-six thousand dollar option and how it applies to the concrete contract on the alternate.

MR. HEYMAN: To expedite matters, there is further reference under paragraph eleven

which speaks of an additional thirty thousand dollar option. So my answer will apply to both of these, the original contract which was awarded to Rand, provided for the performance of a certain amount of work. In that contract the State reserved unto itself the right to award to Rand, additional work under the previously agreed price. Rand, in turn, when it entered into the subcontract with Seaway, which is Plaintiff's Exhibit D for identification, provided in the subcontract with Seaway, that in the event the State exercised the options which it had placed in the contract with Rand, namely, the prime contract, that then Seaway, would then be awarded additional work under a sixty day price which is set forth in the contract with Seaway, namely, in one instance, to the sum of thirty-six thousand dollars.

BY MR. SELKER:

Q Mr. Tanenbaum, did Rand ultimately receive from the State of New Jersey authorization to complete what has been described as an alternate which for purposes of the subcontract for concrete paving, involved the figure

of thirty-six thousand dollars?

A It did.

Q Was this reflected in additional work done by Seaway?

A Yes, it was.

Q Can you tell us the approximate dates involved?

A The award by the State was -- is dated August 2nd, 1967.

MR. SELKER: Can we mark that for identification as Plaintiff's Exhibit E?

MR. HEYMAN: You would call that instrument a supplemental agreement?

THE WITNESS: Yes, with the State of New Jersey.

(Whereupon, at this time, the aforementioned document was received and marked "Plaintiff's Exhibit E" for identification, as of this date, by the reporter.)

BY MR. SELKER:

Q Is it then correct, Mr. Tanenbaum, that as of August 2, 1967, the total contract sum that existed between Rand, the general contractor and Seaway, the

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subcontractor, was $208,000, which represents the $172,000 in Exhibit D and then the additional under "Option Price", is that correct?

A That is right.

Q Was there any other contractual agreement between Rand Construction and Seaway with reference to the Skillman job other than what appears on Plaintiff's Exhibit D?

A No, there wasn't.

Q Mr. Tanenbaum, you mentioned before that your estimated cost of concrete work was $158,000 for the base bid?

A That's right.

Q In view of your explanation and that of Mr. Heyman as to the alternate work which we just described, will you tell us now, what was your estimate for all of the concrete work which was ultimately covered by the Seaway subcontract?

A $209,016.

Q Have you calculated that from notes that exist in your file?

A Yes, I have.

Q These are records over which you, as President of Rand Construction, had personal knowledge

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and involvement at the time of their preparation, is that correct?

A To some extent, yes.

Q You recall them now, by looking at them so you are able to testify from your own recollection as to that accuracy, is that correct?

A Yes.

Q Can you tell us, Mr. Tanenbaum --

MR. HEYMAN: You want to mark these records so we can have them available?

MR. SELKER: I don't think it's necessary.

MR. HEYMAN: All right.

BY MR. SELKER:

Q Can you tell us what other bids you received, if any, by subcontractors for the same concrete work which was incorporated in the Seaway subcontract?

A Yes, if you will give me a moment.

Q Surely.

A I see in our files, a record of a quotation by someone called Bill Postma, 192 Pinelynn Road, Glenrock, New Jersey. 205

MR. HEYMAN: It's a 201 number, which is obviously Jersey.

A 201 number, dated January 12th, 1967. This is a record of a verbal quotation.

Q What was the amount of it, sir?

$167,000 for the base bid.

Q That was the base bid, which compared to the Seaway base bid of $172,000.

MR. HEYMAN: Off the record.

(Whereupon, at this time, a discussion was held off the record.)

BY MR. SELKER:

Q And is the amount of Mr. Postma's bid the same as you stated earlier?

A Yes.

Q Was Mr. Postma's bid, so far as you know, Mr. Tanenbaum, based on the same plan specifications and the description and the scope of work as the Seaway people?

A Yes, it was.

Q Before we leave Mr. Postma, do you have a figure that Mr. Postma gave you for the additional work which was comparable to the Seaway addition of $36,000?

A Yes, I see it, a statement for each additional cottage in the amount of $20,500.

MR. HEYMAN: Would that make it

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forty-one thousand?

THE WITNESS: No.

MR. HEYMAN: Twenty thousand for each cottage?

THE WITNESS: For each cottage.

BY MR. SELKER:

Q Is the 20,500 in the Postma's bid comparable in scope of work to the Seaway bid?

A No, it is not.

Q Can you give us a figure that it is comparable to -- can you tell us of the Postma bid that would compare to the Seaway?

A Not in the papers as I see them. He does not give sufficient information so that I can construct what the equivalent of Seaway's total option would be.

Q Is it substantially the same work as covered by the Seaway bid, that is, the twenty thousand, five hundred and the alternate part of it, or is it a completely different item, Mr. Tanenbaum?

A There is information lacking for me to reconstruct it.

MR. HEYMAN: Explain why. 207

A The option is for an additional cottage and a swimming pool and a chapel. The chapel is a very, very

small building. That is the item that we have five thousand dollars for. I don't see anything for the chapel and the swimming pool. I have to see more information to see what the total option price would be comparable to Seaway's 36,000 dollars.

Q What was the date of that Postma letter?

A January 26th, 1967.

Q Do you have any other correspondence or communications that indicate the receipt of other bids from other cement subcontractors?

A No, just the J&J.

MR. SELKER: Off the record.

(Whereupon, at this time, a discussion was held off the record.)

BY MR. SELKER:

Q Let's place on the record, Mr. Tanenbaum, the date of your receipt from J&J Construction Company of Bristol, Pennsylvania, of their bid and also tell us their amount?

A There appears the date of our verbal quotation form March 9, 1967 and the amount if 194,000 dollars for everything, including the option plus an additional amount of 25,500 for the outside site work, making a total of 219,500 as against Seaway amount of 208,000 dollars.

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Q Do you find any other subcontractor's bids for concrete work in your file?

A No, I don't.

Q Do you have any recollection of any other such bids?

A No, I do not.

Q I noticed in the file reference to Warner Company, was Warner Company a supplier of concret?

A They were a supplier of Ready Mix.

MR. HEYMAN: That's Ready Mix concrete?

THE WITNESS: Concrete.

BY MR. SELKER:

Q Where were they located, Mr. Tanenbaum?

A 1721 Arch Street, Philadelphia, Pennsylvania.

Q What is the full name of the company, please?

A It's the Warner Company.

MR. HEYMAN: It has their letterhead, Warner Company, spelled out, that's all.

Q You're looking for the bid from Warner for the supplying of all of the Ready Mix that would be used by the Seaway subcontract?

A Yes.

Q As soon as you find it you will give us

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the figure?

A There were apparently two mixes, two classes of concrete. One was a mix called 30-1 at twelve dollars and sixty-five cents a cubic yard. The other is mix 3750 P.S.I. at twelve dollars and ninety cents.

Q Can you give us the total amount that the Warner Company estimated the concrete would cost for the work covered by the Seaway subcontract?

A Well the preliminary estimates for the quantity of Ready Mix concrete that would be required were in the neighborhood of 4600 cubic yards.

MR. HEYMAN: For both kinds?

THE WITNESS: Yes, I would say so.

Now, again, there is no indication whether that is for the base bid only or including the option. Probably, not including the option.

MR. HEYMAN: That's right.

A At roughly thirteen dollars a cubic yard, would make a total anticipated expenditure of Ready Mix concrete of $59,800.

Q Is it correct then, Mr. Tanenbaum, that the figure of 59,800 dollars was the Warner Company's estimate for the Ready Mix concrete to be used under

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the Seaway subcontract?

A No. I have to go into detail on that, Mr. Selker. This is not a lump sum purchase order. They want to get paid so much per cubic yard for every cubic yard they deliver.

Q Their quote or estimate to you was based on a unit price?

A Solely.

Q Then in order for you to tell us what the estimated cost of all of the concrete would be, you would have to multiply the unit price times your own estimate of the amount of concrete required of the -- number of cubic yards required -- correct, Mr. Tanenbaum?

A Yes, and to that has to be added, of course, the labor of --

MR. HEYMAN: He's talking about the material.

A So there will be no misunderstanding -- less there be no misunderstandings, the cost of form work, etcetera.

Q Will you give us Rand Company's estimate for the work that was covered by Seaway's contract for thirty-six thousand dollars?

A That would be 50,295 dollars.

Q Can you tell us from any of your notes or

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can you calculate for us without extended time, Mr. Tanenbaum, the amount of the $200,000 estimate that was covered by the concrete that was to be used on the job?

A Are you referring just to the material?

Q Yes.

A The Ready Mix material?

Q Yes -- the material. Can you do that?

A I would say roughly --

Q Approximate figures are okay for these purposes.

MR. SELKER: Off the record.

(Whereupon, at this time, a discussion was held off the record.)

MR. SELKER: Let the record show that the witness will calculate the answer to the question and supply it through counsel which calculations can be made a part of the record prior to its being signed by the witness.

BY MR. SELKER:

Q Mr. Tanenbaum, so that your calculations will be comprehensive, will you also include your calculations for the cost of other materials so that when you supply these calculations to counsel you will have components

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of materials which will total -- total materials and the balance of your $200,000 estimate will be labor.

MR. HEYMAN: Deemed to be labor.

MR. SELKER: Yes.

A Yes, I will.

Q You will add it as an adendum.

How many other subcontractors on this job had contracts whose amount exceeded one hundred thousand dollars, approximately?

MR. HEYMAN: Are you thinking of the trades?

A I am thinking of the trades.

Q You can recite them as you think about them.

A Suppose I get the rest of these sheets?

MR. HEYMAN: Yes, go ahead.

MR. SELKER: That's what I asked for earlier.

MR. HEYMAN: Okay.

MR. SELKER: We'll proceed and come back to this a little later.

Would you mark this as Plaintiff's Exhibit F for identification, which is an agreement dated April 7, 1967, between Rand Construction Company, Inc. and Seaway Floor

and Paving Company, Inc.

(Whereupon, the aforementioned document was received and marked as "Plaintiff's Exhibit F" for identification as of this date, by the reporter.)

MR. SELKER: Handing you what has been marked for identification as Plaintiff's Exhibit F, will you stipulate that this Exhibit F was entered into between Rand and Seaway on the same date that the agreement, Plaintiff's Exhibit D was entered into between the parties?

MR. HEYMAN: So stipulated.

MR. SELKER: Will you also stipulate that Exhibit F was required by Rand as a condition for Seaway's obtaining the subcontract in the form of Plaintiff's Exhibit D.

MR. HEYMAN: So stipulated.

BY MR. SELKER:

Q Mr. Tanenbaum, calling your attention back to the subject that we left a few moments ago on the number of other subcontractors and different trades, can you tell us by identifying the trades and using as a

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standard form substantial dollars, one hundred thousand dollars, what other trades and what other subcontractors on the Skillman job was substantial subcontractors?

A Using one hundred thousand dollars as a definition of "substantial"?

Q Yes, sir.

A Castora and Company, Inc. -- Castora did the excavation and paving and their total payments which presumably is the original contract plus maybe some extras is one hundred and three thousand and sixty-five dollars. George H. Tuross, Inc. Tuross was the roofing contractor on these nine, ten buildings and the final amount of his contract was one hundred forty-three thousand seventy-four dollars and forty-seven cents. John B. Kelly, Inc. the brick mason, four hundred eight thousand thirty dollars and twenty-seven cents. Star Contracting Corp., the carpentry subcontractor, one hundred and fifty-seven thousand four hundred and one dollars and twenty-six cents. Starline, Inc, furnished and installed the windows, aluminum entrances, the curtain walls and miscellaneous materials on the facades of the buildings, one hundred and thirty-five thousand dollars.

Q The five names that you have just given us for subcontractors and/or suppliers whose contracts

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exceeded one hundred thousand dollars were all people who ultimately did work on this job, is that correct?

A That is right.

Q Would you tell us what experience you had had -- prior experience with the Castora Paving Contractor?

A This may have been the first project that they have done for us.

Q Were you familiar with the Castora Paving contractor by reputation or otherwise?

A Yes, quite well.

Q Will you tell us of their reputation and where you learned of it?

A Well, Castora Paving Company had been in business for many years in this particular area. They were listed in all the trade publications of the area in the blue book, in the subcontractor's register and some other. They were fairly well established, as I recall, quite an old firm and had their own blacktop plant and owned a lot of equipment.

Q The subcontractor's register that you referred to, will you tell us its exact published name?

A I don't remember the exact published name. It's called the blue book of the industry.

Q Is it broken down into geographical areas?

A Yes, it is.

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Q Do you use that in investigating subcontractors that supply bids to you?

A It's one tool.

Q What other tools do you use?

A Our own experience, references of other contractors, publications of the contractor's association, recommendations of architects, manufacturer's literature.

Q Did you ask the Castora Contracting Company to supply any kind of a bond on this job?

A If you can give me a moment, I will -- I can check the records and see whether or not we did ask them to post them to post the bond or not.

Q When you check for the record, also check for the others, so we can complete the questioning.

A Insofar as Kelly is concerned, -- Kelly is the largest brick mason in the Philadelphia, Camden, southern Jersey area. They have done any number of projects for us and Fort Dix and MacGuire Air Force Base over the years for both Rand Construction Company and a prior association of my partners and mine where we did an extensive amount of work in southern Jersey, so the chances are that it never occurred to us to ask Kelly for a bond. I'll check it, but in fact, they are doing a job for us right now, at Fort Monmouth.

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Star Contracting, the same way.

Star Contracting is owned by a man named Eisman who had been in business for many, many years. He had worked over the country, framing of houses. They had done work for us, from the Yeshiva University in 1962 -- they had done any number of projects for us. I would say eight or ten projects for us, all during the sixties. I doubt very much if we would have asked them for a bond. We had a good deal of personal experience with Kelly and Star. I am going to go check the records for Castora, Tuross and Starline.

Q Let's go ahead first -- while the records are being obtained, we'll proceed and come back to this question.

With reference to Seaway Paving, would you tell us who was the first representative of Seaway Paving that you met personally?

A My recollection is that it was Mr. McEwan.

Q Using as a reference date, the contract date April 7, 1967, approximately how long before that date did you meet Mr. McEwan?

A This would be, -- my recollection does not indicate an exact date. I would say probably well in advance of the time we signed the contract. Probably some time between

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their first letter requesting an opportunity to bid for the work and the time they signed the contract.

Q Prior to your personally meeting Mr. McEwan, did you do any investigation of his background by checking with any other employers?

A I think we probably did as evidenced by the fact that we have a letter of recommendation from International Paper Company. Yes, I remember the check with the -- the Green and White Construction Company. Green and White was the construction firm. They are listed on the letter giving references by Seaway. The first November 29th letter. Green and White is the construction firm that was the vehicle by which Mr. Overmeyer built all of his warehouses -- D.H. Overmeyer.

Q Would you tell me who they are?

A I know them -- I don't know them personally, I know them only by hearsay.

Q By reputation?

A Reputation -- by hearsay. Mr. Overmeyer is a man who built commercial warehouses extensively throughout the country for rent. Rented them out by the square foot and the Seaway firm did the heavy duty concrete floors in a number of these warehouses.

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Q Do you remember who you personally checked with at Green and White?

A I don't have anything that could refresh my recollection as to who I contacted at the Green and White Construction Company.

Q Do you recall being told by Green and White Construction Company that there were financial troubles on the job that Seaway did?

A No, I don't recollect a conversation along those lines.

Q When you first met Mr. McEwan, did you ask him for any financial statements of Seaway Floor and Paving Company?

A When we first met him do you mean?

Q Yes.

A I don't recall whether we did or not.

Q Had you on any previous occasion to your first meeting asked for financial statements of Seaway?

A I don't recall when we first asked him, Mr. Selker. At some point we did ask him that he would be required to post a performance and payment bond.

Q With that request, do you recall whether you received any financial statements from Seaway Company?

A I don't think we did. At least I don't see any

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record in the file of any financial statements.

Q In your consideration of awarding Seaway this subcontract, did you deem it important to find out whether they were a financially solvent company?

A Yes, but again --

Q What steps did you take to ascertain their financial responsibility?

A Primarily requiring the bond -- would be our protection.

Q Did you take any other steps by inquiring of them of their financial capacity?

A I don't recall whether we did or not. I don't see any records to that effect.

Q To your recollection, when did you first begin the discussion with them about a bond?

A I would say again, this is speculation. I would say at the time that it appeared that we would be able to do business with them, that their price was fairly reasonable.

Q Did your conversation about a bond take place with Mr. McEwan or with any other representative of Seaway?

A Well, somewhere along the line, Mr. McEwan brought in Mr. Ogletree.

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Q Did he bring him into your discussions prior to the signing of the contract?

A Yes, I'm sure he did.

Q Where did your meeting take place with Mr. Ogletree and with Mr. McEwan?

A All these meetings were in this office.

Q Who else was in attendance at those meetings?

A I think possibly their estimator -- possibly, I am not too sure. I know there were discussions with the estimator, but that may have only been on the phone.

Q Was there anyone else representing Rand, present at the meetings?

A Our attorney, Mr. Heyman.

Q How many different occasions was there a meeting or were there meetings between Mr. Heyman and Mr. Tanenbaum, representing Rand, and Mr. Ogletree and Mr. McEwan, representing Seaway, prior to the signing of the contract?

MR. HEYMAN: Me, one --

A Possibly two --

MR. HEYMAN: But I was only present once.

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A One with Mr. Heyman and one without Mr. Heyman.

Q How would you characterize the construction

experience and familiarity with the job of Mr. McEwan?

A Mr. McEwan seemed to be quite knowledgeable. I was quite impressed. He apparently started as a cement finisher working with the tools, learning the trade the right way to learn the trade. He apparently was the production man for the company. He spoke very knowledgeably and he mentioned the job that they were doing or had completed or were in the middle of doing and as I say obviously knew his business.

Q What about Mr. Ogletree, how would you characterize his familiarity with the job?

A How would I characterize his familiarity?

Q Yes.

A I don't recall that we ever got into any discussions with Mr. Ogletree as to the actual technical questions involved, the form work, the concrete, the finishing or anything of that sort.

Q What did Mr. Ogletree represent to you his position with the company was, if any?

A Well, now you're asking me how he represented himself.

Q To you.

A This is seven or eight years ago. He seemed to be an associate of Mr. McEwan. He definitely seemed to be

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an officer of the corporation and I guess I would have to say that my recollection is that he handled the financial matters and Mr. McEwan the actual production questions.

Q At one of these meetings, did you ask Mr. Ogletree in words substantially to the following effect "Can you produce a performance bond for this job?"

A Oh, yes.

Q What was his --

A Mr. Ogletree and Mr. McEwan before that.

Q What was their answer?

A Again, I can't reconstruct the exact conversation but my recollection is that his answer -- his answer obviously was ultimately instead of a bond they would post some collateral -- instead of a bond written by a surety company, they would post collateral.

Q Did you ask them why they couldn't produce a bond for a surety company?

A I don't recall that I did. In fact, I think very often collateral --

MR. HEYMAN: Let the record show that at a meeting that I attended, where Mr. McEwan was present, Mr. Tanenbaum was present and Mr. Hilton was present of Rand

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Construction, that I was the one who suggested that they, as a condition precedent to the awarding of any contract that they would be required to post a surety bond in view of the fact that this was the first job that they were doing for Rand Construction. At that time the answer that was given was that they had several jobs outstanding and that their bondability had been -- had reached a point where the surety company would not give them any surety bonds, but that they would in lieu of that, furnish some kind of cash security to insure the performance of the bond. As a matter of fact, the agreement originally drawn --

MR. SELKER: Let the record show that --

MR. HEYMAN: Let the record show that I am referring to Plaintiff's Exhibit D, marked for identification, the agreement dated April 7, 1967, which was drawn by me, provided for originally in paragraph known as "guarantee" in order to insure faithful performance under this agreement,

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the second party agrees to deposit the sum of 25,000 dollars, no cents, in escrow account to be held by Ralph Heyman, Esq. attorney for Rand, until satisfactory completion of all work to be performed by it.

This was subsequently stricken from the agreement when it was signed on April 7th, 1967, because prior to that time I had received a telephone call from Mr. McEwan to the effect that instead of posting the 25,000 dollars with me, they would prefer to have a certificate of deposits issued by any bank that we would suggest to the end that they would be able to get a higher percentage of interest on it. They didn't feel that they wanted to lose the interest on that money. I explained to them that I was going to put the money into an interest bearing escrow account in any event, but he said that he would prefer to have it done that way. I said it makes no difference to us. I will prepare or cause to be prepared an undertaking similar to that of a surety bond in which there would be a recyle to the

effect that you are going to post twenty-five thousand dollars in the form of a Certificate of Deposit. That accounts for the fact that the agreement dated April 7, Plaintiff's EXhibit D and the purported security agreement dated April 7, 1967, were both executed by the parties at the same time and made provision for the furnishing of the Certificate of Deposit which in fact had already been consummated prior to the time when this agreement -- these both agreements were entered into because there is a recital to the effect that the Certificate of Deposit has been turned over to the contractor. That is my recollection with recollection with respect to the basis upon which the surety bond was waived and the security was posted.

MR. SELKER: Mr. Heyman, getting back to the conversations that you participated in with Mr. Tanenbaum and the Seaway officers, did you question the Seaway officers as to the identity of the other jobs on which they were bonded?

MR. HEYMAN: No. This was not my

function.

MR. SELKER: Did Mr. Tanenbaum question them in your presence?

MR. HEYMAN: To my knowledge, I don't think so. I think once they established the fact that they -- we left the room at the point where they said that they would be prepared to post the twenty-five thousand dollars in escrow with me. We went outside and we had a conversation and that conversation was to this effect, that in view of the fact that at that point the only amount involved was 100 -- the base contract of 172,000 dollars, that the twenty-five thousand dollars would be a good enough cushion so that in the event the job fell out of hand, and we had access to that 25, because we would have a monthly control on the job, getting the affidavits from them as to whom they paid and what they did, as these files will show that it was done with every other subcontractor, we felt that we had as much security as if we had a surety company bond submitted by them. I said

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if you're satisfied that you've got it, I will recommend that you waive it. That's why we struck from paragraph -- article 23 of the contract the requirement for a surety company bond and inserted the guarantee provision which ultimately likewise was stricken when the separate agreement of undertaking of April 7, 1967 was executed.

MR. SELKER: Mr. Heyman, did you personally participate -- let the record show that it is as if the witness had been sworn -- his professional statement is accepted as if under oath. Is that agreeable?

MR. HEYMAN: That's agreeable.

MR. SELKER: Handing you what has been marked for identification as Exhibit G, which is a copy of what purports to be a certificate of deposit from the Trenton Trust Company dated April 7, 1967, will you tell us whether you had any part in obtaining that certificate of deposit?

MR. HEYMAN: No, I did not.

MR. SELKER: Will you stipulate for the

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record that this is a copy of an original which, in fact, served as a certificate of deposit in this transaction?

MR. HEYMAN: So stipulated. I will say that while I did not participate in this transaction, it was under my supervision to the extent that we recommended that Mr. McEwan go to see a certain attorney in New Jersey who had done some work for Rand prior to that time and Mr. Tannenbaum is better able to tell you about the procedure which ultimately brought about the creation of this.

MR. SELKER: Let me go back to Mr. Tanenbaum and follow through with the question about Mr. George H. Bohlinger.

CONTINUED EXAMINATION

BY MR. SELKER:

Q Firstly, can you identify for the record, those documents which have been marked for identification, Exhibits H,I,J,K and L, all of said documents pertaining to this transaction. Exhibits H,K,J and L bearing the signature of George Bohlinger and the Exhibit I bearing the signature of the officers of Seaway. Might I simplify the proceeding by stating that these are the originals as

signed by the people whose signatures are shown thereon.

MR. HEYMAN: So stipulated.

BY MR. SELKER:

Q Calling your attention to Mr. Bohlinger, will you tell us how Mr. Bohlinger entered into the transaction?

A Mr. Bohlinger had performed legal services for Rand Construction Company at a prior occasion.

When the time came for -- as I recall certain filings that were necessary in Trenton, in connection with this subcontract, we thought in terms of Mr. Bohlinger to handle that phase of the transaction for us.

MR. HEYMAN: This has nothing to do with this transaction?

THE WITNESS: That's right.

A So we suggested that Mr. Bohlinger handle this transaction as well.

Q At the time, namely, in April of 1967, Mr. Bohlinger was then engaged as an attorney for Rand Construction Company?

A Yes.

Q At the same time you were negotiating with Seaway for the subcontract, you recommended to Seaway that they engage the professional services of Mr. Bohlinger also,

correct?

A I don't recall that. I know Mr. Bohlinger was performing services for Rand at the time.

Q My question was that it was you who recommended Mr. Bohlinger for the performance of professional services to Seaway, is that correct?

A I don't know about professional services -- to handle some of the actual -- do some of the actual leg work, yes.

Q Leg work for whom?

A You're asking a question that I perhaps better defer to my attorney. I don't know when you say "professional services for Seaway", I really don't know whether he performed professional services --

MR. HEYMAN: If you're talking about this transaction --

MR. SELKER: Just a moment.

BY MR. SELKER:

Q Was it you, Mr. Tanenbaum, who recommended Mr. Bohlinger to the Seaway people?

A We sent Seaway people to Mr. Bohlinger.

Q What was the purpose in your so-doing it?

A To help in opening up an account, in obtaining the Certificate of Deposit and I have a vague recollection that there was something that had to be done in Trenton,

at the Capitol -- some legal steps had to be taken in Trenton -- I am not too sure.

Q Do you recall any conversation about the Seaway people having to register with the corporation authorities in the State of New Jersey for this job?

A No, I don't recall that.

Q So that it's correct then, that you sent the Seaway people to Mr. Bohlinger for his services to expedite the obtaining of the Certificate of Deposit, that you and the Seaway people had agreed to under your contract and your bond, is that correct?

A Yes, sir, right.

Q In the performance of those services by Mr. Bohlinger, did you look to Mr. Bohlinger as your attorney to protect your interests?

A Yes, we did.

Q Did you also feel confident that Mr. Bohlinger was a competent attorney who could also serve the interests of Seaway in protecting their interests under the bond and by "bond", Mr. Tanenbaum, you know we are referring to what has been marked as Plaintiff's Exhibit F?

A I knew of Mr. Bohlinger as a competent attorney. We had used him before and we've used him on another occasion since. The other aspect of your question, I am not too sure

I understand.

Q Did you understand at that time, that Mr. Bohlinger was to act in a capacity to protect the interests of both parties in holding money?

A Insofar as holding money is concerned, you mean to hold the Certificate of Deposit?

Q Yes.

A I think in that regard he was to act on our behalf, to watch out for Rand's interests primarily.

Q Well --

A Insofar as the Certificate of Deposit is concerned, -- after all, this was collateral security that was protection of Rand.

Q He was also to act in Seaway's interests, to see that nobody else got the money if they weren't entitled to it.

MR. HEYMAN: Now, that is argumentative.

MR. SELKER: I am asking the question if he understood that.

A If he ever had any conversations with Seaway along these lines, -- I wouldn't be party to any such conversations, Mr. Selker.

Q Do you have personal knowledge as to how the funds were obtained for the purchase of Exhibit C, the

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25,000 dollar Certificate of Deposit?

A No, I don't. You mean obtained by whom -- by Mr. Bohlinger to open up the account?

Q Yes.

A No, I don't.

MR. SELKER: Mr. Heyman, do you have any personal knowledge as to how the funds were obtained?

MR. HEYMAN: No, I don't.

BY MR. SELKER:

Q Mr. Tanenbaum, did you ever have personal discussions with Mr. Ogletree as to how the funds were to be obtained for purposes of purchasing the Certificate of Deposit, Exhibit G?

A You mean whether by -- again, I am -- if I knew what your question meant -- you mean by way of --

MR. HEYMAN: Where was the money to come from?

A You mean a bank borrowed the money or --

MR. HEYMAN: Yes.

A I wouldn't know.

Q Did Mr. Bohlinger ever state to you that the funds to purchase the Certificate of Deposit, Exhibit G, were presented in cash in dollar bills of different

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denominations by the Seaway people?

A No, I don't think he did, no.

Q So your testimony is then that you have and had no personal knowledge of the transactions surrounding the purchase of the Certificate of Deposit, Exhibit G, is that correct?

A The source of funds I wouldn't know.

Q Did you have any personal conversation with either Mr. Ogletree or Mr. McEwan about their purchasing this Certificate of Deposit, Exhibit G, other than the general conversations that you referred to before?

MR. HEYMAN: The conversation was with me, not with him.

MR. SELKER: He was present.

MR. HEYMAN: No, he wasn't.

They called me on the phone and after I had incorporated this clause about a guarantee.

MR. SELKER: Can we go back, Mr. Heyman, because I thought you testified that there was a meeting at which the both of you were present at which you left the room and had some private discussions with your client.

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MR. HEYMAN: Precisely, Mr. Selker and you then went back together and had a conversation with the Seaway officers.

MR. HEYMAN: Except you are overlooking one fact.

MR. SELKER: You tell me.

MR. HEYMAN: At this meeting where I was present, when I said that they had to furnish a payment and performance bond and they said that they couldn't do it and the reason for that is that they had reached their bondability, in essence -- that's what it was, they were prepared to post 25,000 dollars in cash or -- and deposit it with me, I don't think they used the word "cash" -- deposit 25,000 dollars with me, which I would hold in escrow -- it says, "in escrow account" to be held by me. We went outside. I asked them whether they thought, if they did furnish 25,000 dollars, whether that would constitute sufficient security to them or whether or not they wanted more or whether they didn't want to have anything to do with them. The answer by either Mr. Tanenbaum or Mr. Hilton

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I don't know who it was said that since the job is only 100 --

MR. SELKER: You testified to that.

MR. HEYMAN: What happens to this is that I go back and proceed to prepare --

MR. SELKER: Wait, wait. This conversation -- the conversation that you just described took place at a meeting in the offices of Rand?

MR. HEYMAN: Sometime before April of 1967.

MR. SELKER: That's as I understood your testimony. Did you go back into a room and have discussions with the Seway people the same day?

MR. HEYMAN: Yes.

MR. SELKER: Did you then communicate to the Seaway officers your decision to ask for and be satisfied with the 25,000 dollar security deposit?

MR. HEYMAN: No, that wasn't the time. That's not what I said.

MR. SELKER: Was there any further discussion at that meeting about the amount

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of the bond that you were going to ask for?

MR. HEYMAN: No.

MR. SELKER: Tell us then when the next time was that you discussed the bond and with whom you discussed it.

MR. HEYMAN: Subsequent to this conversation that I have just referred to, which was prior to April 7, 1967 -- I don't know how long -- maybe a week or ten days, I'm not sure -- prior to this date the agreement had been reached that they would post 25,000 dollars with me in escrow until satisfactory completion of all work was to be performed. They agreed to do it -- Rand agreed to accept it. Subsequent to that conversation, I think it was Mr. McEwan who called me on the phone and said to me rather than deposit -- that's what I said before, rather than deposit the twenty-five thousand dollars with me, they preferred to furnish --

MR. SELKER: You told us about that. It was just the sequence of events that I --

MR. HEYMAN: So, it didn't happen at the same conversation.

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MR. SELKER: Subsequent to the telephone conversation with Mr. McEwan, did you then strike out the language which appeared in Exhibit D, which prior to that telephone conversation had been your draft?

MR. HEYMAN: Yes, that is correct. Firstly, however, before that was done, I called Mr. Tanenbaum and I told him of what they were prepared to do in lieu of depositing the 25,000 dollars with me and I said it would be no problem with respect to that. In effect, they wanted to get interest on their money and they wanted to be secure that they would get the interest and under the Certificate of Deposit they knew they were going to get interest.

MR. SELKER: That explains the change in the agreement or the draft because at the time of the conversation, it wasn't yet an agreement?

MR. HEYMAN: That is correct.

Let me put it this way, there was an agreement --

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MR. SELKER: A written agreement signed?

MR. HEYMAN: No, no.

MR. SELKER: At the time of the telephone conversation with Mr. McEwan, there was a verbal agreement?

MR. HEYMAN: That is correct.

MR. SELKER: The telephone conversation between Mr. McEwan and Mr. Heyman, you, resulted in another verbal agreement, that the 25,000 dollars was to be placed in a Certificate of Deposit so it could draw interest on the Seaway money.

MR. HEYMAN: That is correct.

MR. SELKER: That is as you testified, a moment ago.

MR. HEYMAN: That is correct.

MR. SELKER: Was it subsequent to that telephone conversation that Mr. Heyman, meaning you, as the draftsman of Exhibit D, changed his proposed draft of the agreement in the form of Exhibit D as it is now shown?

MR. HEYMAN: No, not at that point.

MR. SELKER: Explain when that happened.

MR. HEYMAN: I called Mr. Tanenbaum and I said to Mr. Tanenbaum,"They want to change the procedure under which they would deposit the 25,000 dollars, to a Certificate of Deposit. I see no -- nothing wrong with that." I said "However, I suggest that you get ahold of somebody --" -- he had told me about the fact that he knew this counsel in Jersey -- "I suggest that you get ahold of somebody, whoever had been doing some work for you and see to it that the proper -- before we change the instrument, before we do anything that the deposit is actually made -- the deposit of 25,000 dollars -- the security deposit -- the Certificate of Deposit is actually made to someone on behalf of Rand."

At that time we would then execute the original agreement which was contemplated less the guaranteed provision and also the security agreement.

MR. SELKER: Wasn't the original intention as expressed in your draft of Exhibit D, for you, Mr. Heyman, to hold the money?

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MR. HEYMAN: That is correct.

MR. SELKER: That change took place as a result of that conversation with Mr. McEwan or did it take place as a result of your own change as counsel representing that change to your client?

MR. HEYMAN: It's a combination of circumstances.

MR. SELKER: I don't want to get into private confidential communications --

MR. HEYMAN: You're quite right, it was a combination of two situations. If I was going to hold the money then the agreement as originally drawn would have been sufficient from my way of thinking and we would have stricken the provision relating to the performance bond which was done anyway, but when they wanted to produce a Certificate of Deposit in lieu of depositing the sum of 25,000 dollars with me, then I said to Mr. Tanenbaum; you should arrange with someone in New Jersey to see to it that that actual Certificate of Deposit was obtained and delivered either to Rand or to someone acting on

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behalf of Rand before we would sign this agreement because the original would recite that there had been an actual delivery and if there hadn't been obtained, there couldn't have been any delivery.

MR. SELKER: You mentioned that change came about as a result of both your discussion with your client and Mr. McEwan. Is it true that part of the reason for that change was that the holding of the Certificate of Deposit would better be for the benefit of Seaway, if it were held by a person other than Mr. Heyman, who was acting and negotiating the contract for Rand?

MR. HEYMAN: No, that wasn't the purpose at all. The purpose was that since the transaction was being in effect negotiated in New Jersey, I felt a New Jersey attorney should handle that phase of the situation, that is all. That's the only reason.

MR. SELKER: Did you have a personal conversation with Mr. Bohlinger?

MR. HEYMAN: No, I did not. 244

I did not. It's my understanding that

Mr. Tanenbaum is the party who dealt with him.

MR. SELKER: If I can get back to Mr. Tanenbaum.

CONTINUED EXAMINATION

BY MR. SELKER:

Q Mr. Tanenbaum, did you have a personal conversation with Mr. Bohlinger about the holding of the 25,000 dollar Certificate of Deposit?

A Yes, I did.

I am pretty sure that I did.

Q Do you recall the substance of what your instructions to him were and I -- if your attorney wants to object -- I don't want to get into confidential communications, but as it pertained to Seaway.

A Mr. Selker, it's something that occurred seven years ago and fifteen to twenty projects ago. However, my best recollection is that we would insist on holding something of this sort ourselves or had it under our control and my instructions to Mr. Bohlinger were to retain the Certificate of Deposit in our behalf.

Q Can you tell us, Mr. Tanenbaum, whether the State of New Jersey had any requirements at the time of the awarding of the Skillman contract for the employment of

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minority personnel contractors or subcontractors on the job?

A Yes, they did.

They required an affirmative action program for the employment of the maximum number of minority workmen and subcontractors.

Q Can you tell us what the criteria were for compliance with the State of New Jersey requirements?

A I don't think they had any quotas similar to the New York plan or some of the other home town plans at that time. This was the initial stages of the affirmative action programs, but they were definitely looking for employment of minority workmen and subcontractors in a general way.

Q Did you have any other minority subcontractors or personnel on this job?

A I was thinking as you were talking -- I think we probably had some workmen but no other minority owned subcontracting firms.

Q Was the condition of your obtaining the contract satisfying the State of New Jersey to the extent that you were engaging in an affirmative action program by the employment of minority subcontractors?

A Yes, we had to give them a general program, but as

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I say, in the early days of affirmative action programs, it was not that specific as it is today.

Q Isn't it a fact that a major consideration in your employment of the Seaway people was your desier to comply with the requirements for an affirmative action program?

A It may very well have been.

Q Isn't it a fact that it was?

A Again, you're asking me to recall something from quite sometime ago. I would say that it was undoubtedly a factor in the employment of Seaway.

MR. HEYMAN: I have to ask this question at this point, I think. If you had established that Seaway was not qualified to do this job, would you have engaged them as a subcontractor?

MR. SELKER: Mr. Heyman, wait a minute. It's specifically understandable that you are trying to help me and help the record in giving information and I appreciate that --

MR. HEYMAN: I wasn't trying to give information, I was trying to clarify the situation.

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MR. SELKER: In the conduct of the examination, if we are going down in sequence, I think it best that we complete the sequence and you will have ample opportunity --

MR. HEYMAN: All right, you are right, okay.

BY MR. SELKER:

Q In the contract for the Skillman job, were there any other personnel that you specifically sought out who were minority people for any other trades?

A I can't recall any off-hand.

Q Just so the record is clear, it is a fact that the Seaway people were black persons who were in the subcontracting business, isn't that correct?

A Mr. McEwan and Mr. Oglstree were. However, I was surprised that had a white foreman and superintendent running their job for them at Skillman and all of the local -- carpenters, cement finishers, ironworkers and other tradesmen were all local drawn from the Trenton locals serving this project.

Q The owners of the company as you knew it, was Mr. Oglstree and Mr. McEwan?

A Yes.

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Q In your contract, Exhibit D --

MR. HEYMAN: Subcontract.

Q (Continuing) It's an agreement between Rand and Seaway. In the negotiating of that contract, did you have any discussions with Mr. McEwan about the importance of the minority contract or personnel aspect of the job?

A I think our primary emphasis was on his knowhow in construction. His was an important trade and any lack of conpetance on the part of the concrete contractor -- subcontractor would have a very, very bad effect on the overall performance of our contract for the State of New Jersey.

Q That wasn't quite what I asked. Did you have discussions with him about the minority aspects of the job?

A I may have had, but I definitely recollect having a number of conversations as to how he would preform the work. The conversations were more along those lines.

Q Getting into the actual performance of the work, Mr. Tanenbaum, was the performance of Seaway, as a subcontractor, satisfactory, in general? 249

A Yes, it was.

Q At what point, if any, did you question their performance?

A You say,"at what point, if any" -- I would say that it's always a matter of a general contractor asking a subcontractor for -- to accelerate performance in the interest of an overall project to leave as much room as possible for the successive trades. I don't recall that we ever had any serious disagreement as to the performance -- certainly not -- certainly not at the beginning and the middle of the job.

Q Did there develop serious disagreements towards the time in the fall of 1967?

A Well, again, if you give me an opportunity to check the records I'll see if there is any correspondence along these lines.

Q Let's look at some documents, if it might refresh your memory, if we can identify these.

For example, there is a document dated October 17th, 1967, from I.E.Shaffer and Company, Employee Benefit Plan Administrator that refers to monies due from Seaway floors for union pension fund. Do you recall that?

MR. SELKER: May we mark it as a part of the exhibit?

MR. HEYMAN: Let the record show

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that your question, as I understand it -- you're talking about performance.

A When you talked about performance, your question before, was in terms of physical performance actually in the field, the actual placing of the concrete?

MR. HEYMAN: You would assume that.

THE WITNESS: From the nature of the question, that's right.

Q That's correct.

A This letter that is in my files from I.E. Shaffer and Company, dated October 17th, 1967 mentions that they owe some six hundred, seven hundred sixty dollars which is not performance of the work in the field -- it is not a question of progress, not a question of performance to my mind.

Q As of the date that that letter was written, as calling your attention to financial performance, did you have questions as of that date, if you refer back to the letter --

MR. SELKER: Can I rip this out so we can identify this?

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MR. HEYMAN: Sure.

Q Did you have questions as of that date as to question the financial ability of Seaway?

A You have to define "financial ability".

Q Financial ability to pay their bills.

A No -- no, not from this letter. It's a relatively minor amount you're talking about. The amount of bookkeeping is something else.

Q Calling your attention to what has been marked for identification, as Exhibit M, addressed to Seaway Floor and Paving from Rand Construction Company --

MR. HEYMAN: What's the date?

MR. SELKER: August 31st, 1967.

Q I'll ask you if you can identify that as an accurate copy of a letter that did go out from the Rand Company and if you are familiar with that?

A Yes, I would say that this is an accurate copy -- our file copy of a letter that did go to Seaway Floor and Paving Company.

Q If you will stipulate that the documents which we have just marked for identification, Exhibits M through O -- all of them being copies in the files of Rand Company, which are letters to various addressees, union people and otherwise, describing the failure to pay debts of Seaway -- if you will stipulate for the record that these exhibits are copies of all letters that did go out and that you were aware of these things, we can then

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proceed and work from that point. Is that correct, Mr. Tanenbaum?

MR. HEYMAN: First, I want to look at these. I will stipulate that these exhibits to which you have referred are copies of original communications addressed by Rand to the addressees contained therein.

Nevertheless, reserving the introduction of evidence attesting to the actual amounts which were due from Seaway to the addressees, by virtue of your statements to the effect that their failure to pay their debts.

MR. SELKER: I am not seeking to bind you to the truth of what is stated in there literally on amounts. I am only seeking to bind you by stipulation that these letters were in fact sent and were knowledgeable to the officers of Rand.

MR. HEYMAN: Yes, but you categorized them --

MR. SELKER: That's true. We will accept what you are saying.

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MR. HEYMAN: They could be for two

dollars or four dollars or eight dollars and I don't want that categorization -- I should say characterization of failure to pay debts to just sit there naked.

Q Showing you what has been marked for identification, Exhibit R, which is the original of the letter dated September 18th, 1967, addressed to Seaway Floor and Paving from I.F. Shaffer, Administrator, I will ask you, Mr. Tannenbaum, if you can explain to me how this document marked Exhibit R addressed to Seaway, finds its way into the files of Rand?

A It's either a carbon copy or inadvertently we mailed the original and Seaway received a carbon -- how can I explain that?

MR. FEYMAN: You have no explanation.

THE WITNESS: No. It would not be unusual for us to receive copies.

BY MR. SELKER:

Q It is customary in the trade for pension funds and for union people and for creditors of subtrades to notify the contractor when bills aren't being paid to the union?

A Yes.

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Completely customary for the most part. It does not alarm us as part of this industry.

Q Mr. Tanenbaun, by the documents that have been marked as Exhibits M through R. would it be correct to say that as of the dates of August and September, the latest date in this list of exhibits being September 18th, 1967, you were aware that Seaway Floor and Paving Company was not paying the bills that it was incurring on the Skillman job?

A Mr. Selker, you take any one of these for example -- the first notice that you showed me from a Mr. Shaffer, October 17, says he has not received payments -- in relatively minor amounts, seven hundred and sixty-four dollars altogether for the month of September. That is not unusual at all. I may say that while most of the unions would like the pension and welfare funds paid weekly and even though they may have it in their requirements and regulations, I can tell you for a fact that we pay monthly. Our payroll records are on a computer system. Once a month they bang out a tabulation as an offshoot to the payroll records of all of the employees of each trade particularly and they only do that once a month and we get it at the middle of the month, following the month which they are employed and make up checks and send them out. This is

not unusual. It is not unusual at all.

Q In this particular job do you have any recollection of any records to indicate that any of the other substantial subcontractors that you defined before experienced the same non-payment of current bills?

MR. HEYMAN: I am going to let him answer it, but --

MR. SELKER: This is all discovery.

A Again, you're saying nonpayments. I don't consider this a great delinquency. But it may very well be that the other contractors being local, the other subcontractors, being local, have received more extended courtesies from the unions or whatever than Seaway.

Q Mr. Tanenbaum, was there ever a time on this job, or during the construction of this job where there was any unusual concern on your part about public notoriety or nonpayment of bills?

A Public notoriety?

Q Yes, on this particular job?

A I wouldn't put it in terms of public notoriety. I would say that when some of the subcontractors with whom we had done work before, who had sold us before on prior jobs sent us little notices of the amounts owned them, we would be a little concerned in that we would expect to do

business with them in the future. It was a matter of maintaining a general credit standing ourselves.

Q Name the subcontractors or the suppliers that you referred to?

A Off-hand, I would say that we would watch our relationship with Warner, particularly, where there is only one or two in the industry that you have to do business with, with Ready Mix Supplies, plants closest to the work where you're constantly doing the work.

Q Were there any subcontractors in your employ on this job that gave you this same concern?

A Well, again, it's not --

MR. HERMAN: He means as distinguished from these guys -- he's going up that street about your other relationship with the other subcontractors.

Q Let me put the question again. Were there any other subcontractors and particularly those in the category of substantial ones that you described earlier who gave you any cause for concern on the payment of their bills to suppliers on this job?

A Again, you say "cause for concern." It is so relative and I would say we were not particularly alarmed, we had been faced with, in the past, as every contractor

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in this industry with being forced to pay a debt for a subcontractor --

Q I'll put it another way. Was there any other subcontractor from whose suppliers you received notices that their bills had been paid?

MR. HEYMAN: Take a look at the files.

A Let me see.

MR. HEYMAN: The answer will be appended to the executed examination.

MR. SELKER: The answer will include under paid items of both material and labor.

THE WITNESS: Okay.

MR. SELKER: Let the record show that the parties will stipulate that that document which has been marked for identification as Exhibit S, is an accurate statement, a document prepared by Rand Construction Company setting forth its memorandum --

MR. HEYMAN: Let's say that it speaks for itself in connection with whatever is contained therein.

MR. SELKER: And it comes from --

MR. HEYMAN: It's a source of material from us.

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from us.

MR. SELKER: Okay.

MR. HEYMAN: Exhibit S-1 is an affidavit which was prepared and submitted by Rand Construction and signed by Mr. Tanenbaum as President in response to an inquiry made by Internal Revenue Service with respect to specifically, the proceeds of a Certificate of Deposit in the sum of 25,000 dollars. It also contains a reference to the disposition of the 25,000 dollars and the deficit resulting to the Rand Company as a result of the failure of Seaway to live up to its agreement.

The date is not set forth on the copy which is Exhibit S-1, but it had to be executed sometime prior to March 7, 1969 and certainly very close to March 7, of 1969, because Exhibit S-2 and S-3 are actually a communication from Rand to the Treasury Department in response to a telephone conversation wherein Rand was requested to furnish copies of all checks drawn to Seaway and/or its suppliers.

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MR. SELKER: Mr. Heyman, can we stipulate that the documents which bear the signature of Mr. Bohlinger and the facts that are recited in those documents as signed by Mr. Bohlinger are accurate in the records and reflect the facts and events stated at the time and in the way that they took place by Mr. Bohlinger.

MR. HEYMAN: I will so stipulate.

MR. SELKER: The next exhibit I want to describe and ask that you make copies of and supply to us and attach as identified exhibits will be the following. There are five yellow accounting ledger sheets for Seaway Floor and Paving Company, each of which will be marked for identification.

Exhibit Y, with subnumerals 1,2,3,4, and 5 --

Q Mr. Tarenbaum, is it correct that those five sheets represent the total accounting records that you have as far as Seaway Company is concerned on this job?

A Yes, that is correct.

MR. SELKER: The next group of exhibits that I refer to will be marked Exhibit Z, with

subnumerals for each of the cancelled checks that make up the total dollars paid to or on account of Seaway Floor and Paving and you will make both sides of the checks for us.

I have just two other areas of questioning.

Off the record.

(Whereupon, at this time, a discussion was held off the record.)

MR. SELKER: Exhibit X is a letter from the State of New Jersey, Division of Employment, dated September 25th, 1967, addressed to Rand Construction.

MR. HEYMAN: In response to your inquiry as to when Rand first received any communication either by telephone or in writing from Warner with respect to any delinquency on the part of Seaway, let the record show that prior to the time that Seaway was contracted to perform its work on this job, Rand had received a proposal from Warner setting forth what they would charge for their Ready Mix concrete. This was on the basis that Rand might possibly do the

concrete work with its own forces or that in the event that Rand did subcontract the work, that Rand would recommend that the subcontractor utilize the material of Warner.

When the contract was awarded to Seaway, Seaway was advised or instructed, as the case may be, to go to Warner for the procurement of the Ready Mix concrete because Rand had done business with them before and knew that they were reliable and would keep them supplied with material. Apparently, Seaway did go to Warner. Warner then communicated with Rand and said someone from Seaway was here, I understand that they are a subcontractor and they want purchase material from us. These people are from Ohio. We don't know them and if you will guarantee the payment of their account, we will furnish them with material.

BY MR. SELKER:

Q Now, I address Mr. Tanenbaum. Is that substantially the situation?

A That substantially is as I recollect it.

MR. SELKER: Thank you very much.

No further questions.

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MR. HEYMAN: No questions.

(Whereupon, at 6:20 P.M., the deposition was concluded.)

Subscribed and sworn to before me this 8th day of November 1974.

Tanenbaum

Arlene Henricksen

ARLENE HENRICKSEN
Notary Public, State of New York
No. 24-4511874
Qualified in Kings County
Commission Expires March 30, 1975

* * *

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C	Contract	16-17
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1
2 C E R T I F I C A T E
3
4 STATE OF NEW YORK)
5 COUNTY OF KINGS)
6
7 I, BRIAN A. FEINGOLD , a Notary Public
8 within and for the State of New York, do hereby
9 certify:
10 That the witness(s) whose examination(s)
11 are hereinbefore set forth were duly sworn and
12 that such examination(s) are true records of
13 the testimonies given by such witness(s).
14 I further certify that I am not related
15 to any of the parties to this action by blood
16 or marriage, and that I am in no way interested
17 in the outcome of this matter.
18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 11th day of Sept. ,1974.
20
21
22 Brian A. Feingold
23
24
25

Copy received on 7/25/75

by Ellen Ford

GRUNEWALD, TURK, GILLEN & FORD

Attorneys for Plaintiff Appellee